IDEAS ON LIBERTY

FEE's Monthly Magazine

- Privatizing Airline Safety and Security
- Private Planes: Freedom, Security, and Responsibility
- Are Dietary Guidelines a Public Good?

NOVEMBER 2002

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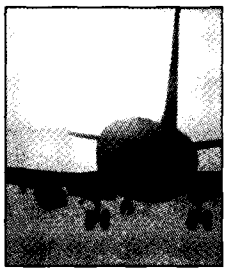

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PERSPECTIVE

When Will They Ever Learn?

Many years ago Ludwig von Mises wrote a thin book called *A Critique of Interventionism,* which argued that government regulation of economic activity invariably causes problems—even from the point of view of the regulators—and thus creates the excuse for more regulation.

The classic case is retail price controls on milk for the purpose of making it more affordable. Of course, if the price ceiling is fixed below the price that consumer demand would have set, consumers will buy more milk, but no new supply will be summoned. Empty store shelves will become common. So now the regulators have a new problem to solve. They may try to solve it by expanding the controls to the wholesale and processing levels, which is Mises's point.

The current business scandals illustrate the point in a less direct way. When Enron fell, everyone lamented the misfortune of employees whose retirement accounts were heavily invested in Enron stock. The company was criticized for encouraging and even permitting such a risky portfolio. Diversification, of course, is ultimately the investor's responsibility, but one culprit was left unscathed: the federal government. Some years ago an enlightened Congress passed a bill to encourage "ESOPs," employee stock-

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ownership plans under the misguided idea that this would achieve the best of socialism (worker control) in a capitalist context. Under the law, the corporation can lower its taxes by meeting a certain level of employee investment in the company. It can profit a company to heavily promote such investment for 401(k)s. There's nothing wrong with employee stock ownership as long as the government is neutral about it. But the government was not neutral, creating problems it now seeks to solve with a new round of legislation.

A second illustration concerns stock options. Whatever one thinks of them, there is little doubt they were given a boost a few years ago when Congress passed a law forbidding corporate tax deductions for the portion of executive salaries over $1 million. Suddenly it became cheaper to pay in stock options than in cash. What do you think happened?

Will they ever learn?

* * *

The tragedy of 9/11 constituted a colossal failure of prevailing airport and airline security measures. Think of the destruction wrought by the use of box cutters and a few commercial jets. Is it time to question the government monopoly over safety? Paul Cleveland and Tom Tacker say yes.

How a competitive market for air safety might operate is no mere abstract discussion. Scott McPherson shows we don't have to look far to find a working model.

The federal government has been telling us how to eat healthily for over 20 years, and we've listened. But it also says we're fatter than ever. What gives? Robert Wright thinks the government got it wrong.

Coming soon to a government showroom near you: Freedom CAR. Step right up and be the first on your block to own this stylish 80-mpg hydrogen-powered pollution-free vehicle. Don't push. There'll be enough for everyone. Before this future arrives, Gardner Goldsmith has a few questions.

More than a million people are forcibly committed to "mental hospitals" each year, and such people are sometimes heard to say they are grateful for the coercion. But not every one says thank you. Read Leonard Frank's firsthand account.

A bumper sticker can say as much as a treatise on political economy. Dale Haywood unpacks the one that says, "People, Not Profits."

There's no bigger name in legal philosophy than Ronald Dworkin. No friend of classical liberalism, he sometimes sounds like F.A. Hayek. Norman Barry sorts it out.

The U.S. appellate courts have found a great way to save time and money. Just one small problem: it threatens individual liberty. Richard Fulmer explains.

Bad ideas about political economy persist long after they have been refuted. Why is that so? Nelson Hultberg's answer will be of interest to advocates of the freedom philosophy.

Here's what our columnists have cooked up this month: Lawrence Reed wants us to kick the cigarette-tax habit. Doug Bandow writes about his visit to Turkey. Thomas Szasz charts the changing attitude toward psychiatry and mental illness. Burton Folsom debunks another myth about the Great Depression. Donald Boudreaux considers the conditions needed for economic growth. Charles Baird reports on a union setback in Oklahoma. And Roy Cordato, reading that government bureaucracy makes capitalism work, protests, "It Just Ain't So!"

The book reviews examine volumes on Woodrow Wilson's foreign-policy legacy, the fight for cryptography, the landmark public-accommodations cases, the new melting pot, the social science of ethics, and the U.S. Constitution.

—SHELDON RICHMAN

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NOVEMBER 2002

In Bureaucracy We Trust?

It Just Ain't So!

What makes the American capitalist system, as opposed to the "capitalism" practiced in other countries, work so well? If your answer includes flexible prices or relatively low taxes, secure property rights or efficient capital markets, you would be woefully misguided. According to Thomas Friedman in the July 28 *New York Times* ("In Oversight We Trust"), what makes our system the "envy" of foreigners from Argentina to China is "the FAA, the FDA . . . the EPA," and yes, "the IRS, the INS, and the FBI."

Friedman writes, "[O]ur federal bureaucrats are to capitalism what the New York Police and Fire Departments were to 9/11—the unsung guardians of America's civic religion . . . that says if you work hard and play by the rules, you'll get rewarded and you won't get ripped off." The analogy suggests that capitalism without a huge regulatory apparatus would be a disaster of 9/11 proportions. He explains his strange, but probably not untypical view by arguing that "fear and greed are built into capitalism. . . . [W]hat distinguishes America is our system's ability to consistently expose, punish, regulate and ultimately reform those excesses."

In one sense Friedman is right, the system does "expose, punish, regulate" and ultimately lead to reform. But he is confused when it comes to identifying the part of the system that gives rise to this process. It is not the bureaucracy, not the alphabet soup of regulatory agencies mentioned above, but the market itself that punishes bad behavior, rewards good behavior, and leads to change. The regulatory agencies he credits for the success of capitalism cannot improve on the market, but only make it worse.

Friedman's view demonstrates almost no understanding of the nature of capitalism or government. This is reflected in several comments. As noted, he says "fear and greed are built into capitalism," and therefore the importance of the heroic bureaucracies is that they keep "excesses" in check. Of course "greed," that is, self-interested behavior, is part of capitalism. Indeed, it is part of human nature and therefore of all economic systems. What distinguishes capitalism is that it channels "greed" into activities that benefit society as a whole. The same cannot be said for the SEC, EPA, and the rest. In fact, as "public choice" analysis has demonstrated, most of what these bureaucracies do can be viewed as attempts to maximize their own power and budgets. His comment about fear is truly bizarre, considering that he praises the IRS, INS, EPA, and FBI. These agencies pursue much of their agenda by instilling fear.

A second comment suggests that Friedman really knows nothing about what goes into a capitalist system. He states that while "Mexico or Argentina, Russia or China . . . have . . . the hardware of capitalism . . . they don't have all the software—namely, an uncorrupted bureaucracy." The hardware of capitalism is its basic institutions. Foremost among these are defined and enforced property rights that include the right to exchange property on any mutually agreeable terms—in other words, an unencumbered and flexible price system. To suggest that those countries have institutional "hardware" anything like this, and that their main problem is corrupt bureaucracy, shows no understanding of either capitalism or the civil and economic institutions there.

This lack of understanding leads Friedman to his erroneous conclusion about the importance of regulatory agencies and presumably the laws they enforce. In a free market, businesses do not have the freedom to pursue greed wherever it takes them. Both the rules of the market and the market process itself

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put severe constraints on business behavior. Free-market activity demands respect for other people's property. For example, under laissez-faire capitalism, where property rights are clearly defined and enforced, constraints on the polluting activities of industry would exist without a massive and intrusive EPA bureaucracy. If a firm's pollution harmed others, it would be held responsible for all damages. Likewise fraud and misrepresentation would also be recognized as illegitimate conduct.

Bureaucracy Not Necessary

Prohibiting pollution and fraud is not an intrusion into the capitalist system but part of what it means for the system to exist. Ensuring that people abstain from those offenses does not require the large bureaucratic apparatus consisting of the SEC, FTC, EPA, and DOJ to regulate business activity. It requires an efficient civil-court system where contract disputes and claims of fraudulent advertising and cooked books can be adjudicated and, if proven, compensation awarded to victims.

Perhaps most egregious of all is Friedman's failure to understand how the market process itself checks harmful behavior. Unlike the government agencies he praises, when businesses are abusive to their customers, or corporations deceive their stockholders, they are penalized. And if they do not reform they are driven out of business—just ask Enron, Arthur Andersen, or WorldCom. While the officers of those companies may eventually be punished for alleged wrongdoings, which may or may not have involved actual violations of other people's rights, the market's punishment has already occurred. It was swift and severe. One need only ask what the market consequences would be for any business that treated its customers the way the IRS treats taxpayers or that managed its books the way, for example, the Pentagon does. The company would be bankrupt in no time. The marketplace is much swifter and harsher in doling out justice than any political agency. Indeed, abuses by government agencies, even when exposed, often go unchanged indefinitely.

Friedman apparently has infinite faith in human beings as bureaucrats with power to impose arbitrary rules, confiscate property, and transfer wealth—and almost no trust in free individuals. This blind faith in government, held by more and more people since 9/11 and the recent corporate scandals, is not only naïve but also betrays the principles on which America was founded. Ultimately it is dangerous to a free society.

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IDEAS ON LIBERTY
NOVEMBER 2002

Privatizing Airline Safety and Security

by Paul A. Cleveland and Thomas L. Tacker

The events of 9/11 underscore the importance of improving the safety and security of air travel. The government's response to the terrorist attacks employs a command-and-control approach. That approach ought to be questioned. After all, it was the Federal Aviation Administration's system that failed on 9/11. Why should we expect additional controls to be more successful? Are there other choices?

Among potential options, Robert Poole has long proposed privatizing airline safety and security through the insurance industry.[1] The financial risks involved provide the insurance companies incentives to regulate the airlines effectively and efficiently without imposing costly rules that serve little or no purpose. Competition and entrepreneurship would then shape the evolutionary development of air safety and security, rather than politics and monopoly bureaucracy. The fallacies in the command-and-control approach show why private security should be adopted.

To expose those fallacies we can examine the FAA's own strategic plan for 2001.[2] The introduction states, "The Federal Aviation Administration (FAA) consists of nearly 50,000 people dedicated to improving the *safety, security, and efficiency* of aviation and commercial space transportation in a way that protects the environment and national security."[3] Among the values it claims to respect are timeliness and accountability. It also asserts that it is "the leading authority in the international aerospace community."[4] This raises some questions.

First, what evidence can the FAA provide to support that assertion? The security failure of 9/11 stands as a major piece of evidence against it. In addition, the claim ignores all the knowledgeable people who actually work in the industry. It is unclear from FAA documents if the agency recognizes the value of these experts. If officials disregard those authorities, is it because the officials are in a better position to judge the measures most needed to secure the skies? If not, then their claim to being the ultimate authority on air safety, security, and efficiency is sheer arrogance.

Second, how were FAA employees held accountable for the security breach that led to the tragedy? Apart from some bad press initially, the institution and its personnel experienced few bad consequences from those events. On the contrary, Congress expanded the agency's bureaucratic control. Thus the FAA actually prospered in spite of its failure. This would seem to call into question whether the agency's commitment to accountability has any significant meaning. The question arises, to whom are officials of the FAA accountable?

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Third, why should anyone believe that the institution is committed to respecting other people? The agency certainly showed little respect for pilots when it prohibited them from being armed in their aircraft. This rule treats pilots as irresponsible individuals who cannot be trusted with such weapons.[5] Had the pilots actually carried firearms, it is unlikely that the hijackers could have succeeded with only box cutters. The pilots at least think so, since their union advocated lifting the gun ban. The FAA and the administration initially denied this request.

These questions can be easily answered when one realizes that the FAA and its workers are not liable for failure. The agency instead is rewarded.[6] Those who have suffered losses have no redress.

Discovery and Innovation

The problem with the command-and control-approach to securing air travel is that it ignores the market process. Austrian-school economists have amply explained why, because of the "knowledge problem," central planning does not work. The knowledge problem consists of people's ignorance of all the factors related to their situations. While private market activity can readily overcome the problem through the use of the price system, central planning cannot.

Israel Kirzner has explained that the price system eases the knowledge problem not because prices embody accurate information, but rather because "disequilibrium prices . . . offer pure profit opportunities that can attract the notice of alert profit-seeking entrepreneurs. . . . To the extent that central planning displaces the entrepreneurial discovery process, whether on a society-wide scale of comprehensive planning or on the more modest scale of state piecemeal intervention in an otherwise free market, the planners are at the same time both smothering the market's ability to transcend the basic knowledge problem and subjecting themselves helplessly to that very problem."[7]

With this in mind, we can compare a private system with a command system for promoting air safety. To begin, perfect safety and security are not attainable by any arrangement. However, the security produced by the command system most likely falls far short of what a private market system could accomplish.

A private system would have important incentives enabling it to evolve better security practices. The reason for this is twofold. First is the liability exposure of airports, airlines, and insurance companies. While some measures may fail, such failure would prompt decision-makers to look for other options. Entrepreneurial activity would inevitably result in the development of better and more cost-efficient means of securing air travel.

Beyond tort liability, passengers themselves would have a greater interest in identifying air carriers with the best safety records. This would likely give rise to information bureaus that would track airlines. In another context Daniel Klein points out why this would occur: "[H]ow much do I know about, say, therapies for ulcers? Perhaps very little. One thing I do know, however, is that I know little about therapies for ulcers. In fact, I am the world's foremost expert on the topic of my knowledge of ulcer therapies. . . . Knowledge of our being ignorant is often almost as valuable as not being ignorant, because the knowledge of ignorance directs us . . . to overcome ignorance. Not having much information about ulcer therapies matters less than our *judgment* of whether we are well informed. Indeed, wiser is the person who is ignorant and knows it than the person who has some information and thinks he is fully informed."[8]

As a result, there would be an opportunity for firms to fill the void with useful information that could enhance consumer judgment. The problem with government control is that it stamps an imprimatur on any airline flying, in a one-size-fits-all approach that leaves passengers with no choice but to choose to fly or not. Thus we can ask, "Is the government really a more knowing assessor of relevant tradeoffs involving hazards, a better steward of knowledge, a speedier, more pointed, and more opportune messenger?"[9] As the late Aaron Wildavsky wrote,

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"Safety results from a process of discovery. Attempting to short-circuit this competitive, evolutionary, trial and error process by wishing the end—safety—without providing the means—decentralized search—is bound to be self-defeating."[10]

Benefits of Privatization

Past experience with private safety regulation through the insurance industry demonstrates its value. Poole shows how the National Board of Fire Underwriters (NBFU) established private inspection of U.S. fire departments beginning in the early nineteenth century.[11] Insurance rates offered to fire departments were adjusted on the basis of compliance with the Board's recommendations. Thus departments had ample incentive from the liability standpoint to adopt the best-known safety practices. The NBFU evolved into the Insurance Services Office (ISO), which continues to conduct detailed analyses of city fire departments to determine the practices that minimize liability. ISO develops ratings that are used by insurers to set premiums.

This same approach could be used in the airline industry. The FAA would be cut free from its bureaucratic setting, and, following Poole's suggestion, insurance companies would replace politicians as the ultimate authority overseeing FAA actions. The agency would be responsible to the insurers, which would hire it to conduct inspections and oversee operations to determine acceptable risks. It could not hide behind its government affiliation if its policies failed to provide adequate safety in air travel. In other words, the FAA and its officials would be accountable since they could be penalized individually and collectively by its customers.

The value of this approach is that it replaces subjective and capricious political controls with clear market incentives for progress. Insurers would drive the organization to adopt policies that produce the best safety results. Furthermore, since the airlines are free to shop for the best insurance rates, all insurers would have a strong incentive to press the FAA to search for the best safety practices. Today FAA officials have no particular incentive to heed the insurers. The main interest of officials now is largely bureaucratic, and thus its practices are typically expedient. This does not translate into the best policies because there is no financial consideration.

A privatized organization would likely adopt the latest technology, where the value relative to cost was demonstrable. Moreover, it would operate efficiently because of its need to generate revenues from private insurers.

Currently, the impact of politics is obvious in some regulations that make no sense. For example, there is a rule that forbids airlines from pushing away from gates until all passengers are seated. This rule seems laughable given that buses and trains routinely let passengers make their own decisions about taking their seats. Before the rule was adopted, Southwest Airlines (noted for its on-time performance) regularly pushed away as passengers were finding seats. They were only required to be seated before takeoff. No one was ever injured. After the new policy was imposed in 1986, at least 4.2 minutes was added to each turnaround, costing Southwest at least $150 million in 1994.[12]

This regulation could be imposed only in a political process. Given the record, it is not likely that a private insurer would be concerned with the minor risk exposure of relaxing this rule.

Opponents of privatization have several concerns, such as what would happen in a crisis if the FAA were private. This is not really an issue. Initially, nothing would have been different on 9/11. The government would have grounded aircraft because of the national emergency, and a private system would not have obstructed that decision. In fact, both United and American, the two airlines whose planes were used in the attacks, grounded their fleets before the government's order was issued.

Opponents also raise concerns about bribery and corruption within a private clearinghouse for safety rules. But, this too is a non-issue. Corruption is a threat for all

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human institutions, "public" or private. Both the historical record and economic logic indicate that private organizations are generally less corrupt than government agencies. Private organizations that provide advice about product quality, such as *Consumer Reports* and Moody's, depend on their reputations for their existence. If it were revealed that they had been bought off in order to secure a favorable judgment, consumer trust would be shattered and their operations would be jeopardized. That's a strong incentive to stay honest. However, that is not the case with government officials and bureaucrats. While bribery might prove disastrous to some individuals in the public realm, it does not generally damage the institutions even where bribery is rampant. As a result, corruption and bribery flourish far better in the public sector as compared to the private sector.

Arthur Andersen vs. the FDA

The experience of Arthur Andersen is instructive. Andersen's fate appears certain given the heavy losses suffered because of the accounting scandals. At this writing, the company is probably finished because liability issues loom large and clients are taking their business elsewhere. Compare this with the scandal involving the Food and Drug Administration (FDA) in 1992, when numerous employees were found accepting bribes to facilitate the approval of certain generic drugs. Rather than leading to the collapse of the organization, the agency received a budget increase to help solve its corruption problem. Moreover, then-FDA commissioner David Kessler was the only Bush appointee to be reappointed by Bill Clinton. A private company involved in such a scandal would probably not survive. But even if it did, its top executives would be fired for allowing such behavior to occur. Evidently, in government corruption is a key to success.

Beyond this example, it can be maintained that public authorities generally are more corruptible. Consider the FAA's reaction to the 1996 crash of a ValuJet airplane. At first, the agency backed the company, but then abruptly abandoned this position by grounding the airline's entire fleet. That led to the demise of the firm even though subsequent information revealed that the company's liability was negligible. While details are sketchy on why the FAA changed its stance, there are some interesting political facts. ValuJet was a non-union airline. The crash occurred in a presidential election year, and the labor unions supported President Clinton. While this may all be coincidental, it seems fair to note the incentives politicians and bureaucrats have to gain from corruption.

A final concern opponents raise is that in a privatized world different firms may adopt different safety strategies. While true, it is also true that the airlines have more incentive to adopt strategies that will achieve the greatest safety at least cost. It is unlikely that one firm's policies will vary wildly from those of other firms unless they are clearly superior. An airline's track record is crucial in gaining the confidence of customers and securing insurance against liability. The benefit of privatization is that any advancement that can improve safety per dollar spent will be adopted by other air carriers quickly. Under government control, such changes are likely to take ages to bring about. □

1. Robert W. Poole Jr., "Toward Safer Skies," in *Instead of Regulation,* ed. Robert W. Poole Jr. (Lexington, Mass.: D.C. Heath and Co., 1982).
2. "FAA Strategic Plan," Federal Aviation Administration, Washington, D.C., January 2001.
3. Ibid., p. 7.
4. Ibid., p. 9.
5. For an excellent discussion about why such rules amount to a frontal assault on human dignity, see Daniel B. Klein, "Liberty, Dignity, and Responsibility: The Moral Triad of a Good Society," *The Independent Review*, Winter 1997, pp. 325–52.
6. For a complete treatment of the process by which crises give rise to government expansion, see Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).
7. Israel Kirzner, *The Meaning of Market Process: Essays in the Development of Modern Austrian Economics* (London: Routledge, 1992), pp. 160–62.
8. Daniel B. Klein, "Quality-and-Safety Assurance: How Voluntary Social Processes Remedy Their Own Shortcomings," *The Independent Review*, Spring 1998, pp. 549–50.
9. Ibid., p. 546.
10. Aaron Wildavsky, *Searching for Safety* (New Brunswick, N.J.: Transaction Publishers, 1988), p. 288.
11. Poole, pp. 231–32.
12. Robert Kneisly, Samuel Fairchild, and Audrey Spolarich, "The Case for Regulatory Sunset," *Handbook of Airline Economics*, ed. Darryl Jenkins (New York: McGraw Hill, 1995), pp. 217–18.

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NOVEMBER 2002

Private Planes: Freedom, Security, and Responsibility

by Scott McPherson

He says it takes a private plane
But you could never get back to your feet again
Unless you break the ball and chain
He says "Now, it's a private plane."
—"Private Plane," Hüsker Dü, '80s punk rock band

In the months since September 11 the American government has been searching for the ever-elusive magic cure that will make the friendly skies of air travel once again, well, friendly. Though it might be too early to make a conclusive statement on the subject, one could well say that flying is not significantly more secure, and furthermore, that government is likely the reason.

The presence of armed national guardsmen in airports, the federalization of airport security, new restrictions on airspace, new identification and pre-boarding procedures (including a new proposal to begin security checks on passengers before they even enter the airport), and random searches have certainly had the visible effect of showing that the government is "doing something" about airline safety. Still the public trembles, and with good reason. After being deluged with warnings of possible terrorist attacks, people are repeatedly told that it is just a matter of when, not if, America will again be struck. This after mountains of new regulations that would "make us safe."

So one would think that a segment of the airline industry that has an excellent track record for security would be given a lot of positive attention by those interested in our protection. Specifically, in North America 1,453 charter operators currently control over 7,000 aircraft that generally fall outside the purview of Federal Aviation Administration (FAA) security guidelines. Flying everything from single-engine propeller-driven planes to giant 737 jumbo jets, the private charter industry shuttles vacationers, businesspeople, law-enforcement personnel, celebrities, and high-level executives to any of a number of destinations on a moment's notice—all with little or no government-mandated security. For example, commercial airline passengers go through the ever-popular screening found universally in American airports, such as metal detectors and x-ray machines. Private charters, on the other hand, operate from small general-aviation terminals typically without any security equipment at all.

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In spite of this unconventional approach, charter operators remain confident in their abilities. "We cater to some of the most security-sensitive people in the world, . . . [and] [t]he air-charter industry views itself as the most secure way for people to fly," says James Coyne, head of the National Air Transportation Association (NATA), which represents charter companies. "You know that no one else is on board the airplane except people that [you] choose to be there."[1] John Hinerman, owner of Dulles-based ExtraordinAir, summed up private-travel security perfectly: "If we don't like you, you're not going to get on our airplane."

Without the crutch of FAA control to lean on, these small charter companies are marketing their reputation for safety and reaching out to a client base that is highly security-conscious. Any whiff that they might not be doing their job means a risk of losing out to a competitor. Such an environment demands personal initiative, "gut-feelings," discrimination, and innovation, all of which are prohibited or actively discouraged in the government-controlled security arena of commercial airline travel. (Witness the lawsuits against commercial airlines for denying boarding to suspicious travelers.) Perhaps most of all, the competitive atmosphere of private charter requires that security practices accomplish goals that most would say are mutually exclusive, namely, being both thorough and non-intrusive.

At risk of oversimplifying the matter, it would seem that to ensure the safety of their passengers and the reputation of their business—and by extension, future profits—private charter airlines rely more on their own sense of how best to handle security than they do on a government-issued checklist—and their competence clearly speaks for itself. According to Clifton Stroud, director of communications for NATA, "There has never been a successful hijacking of a private charter aircraft."[2]

Regulatory Incentives

Of course, this raises an important question: if market pressures are enough to make charter carriers implement effective security standards, why hasn't the same business motive had a similar effect on larger airlines? There are a couple of reasons. First, businesses not only adopt a particular method in response to monetary incentives, they also react to regulatory incentives as well. The airline industry has been under the control of federal regulatory agencies since the 1930s. Today the FAA, not individual commercial airlines, decides what security procedures will be followed. In practice this means that bureaucrats, not airline representatives, mandate the "appropriate" level of security. Sadly, and noticeably, this makes the "business" relationship of airlines (at least as far as security is concerned) a matter between airlines and the federal government, rather than the airlines and their customers. The arrangement encourages doing only what is required to avoid punishment by the regulating agency. As long as it's happy, who can complain?

Observing the effects of government safety controls on market forces almost 40 years ago, Alan Greenspan wrote: "Government regulation is not an alternative means of protecting the consumer [because] it grants an automatic . . . guarantee of safety to the products of any company that complies with its arbitrarily set minimum standards." Worse, "The minimum standards . . . tend to become the maximums as well."[3] The fact that all commercial airline companies operate at the same basic minimum simply shows that they're all living up to the government's expectations. Unlike private charter carriers, they've been given a pass on the need to please their customers, and the predictable result is complacency.

The flying public, too, has been relieved of the responsibility of individually assessing security procedures because they "know" the government is making the airlines do what's "best." Patrons should not be surprised to find that the airline of their choice gladly adheres to all the security standards set *by the government.*

Second, after September 11 many would-be travelers were skeptical about the safety of air travel and demonstrated their unease

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by canceling trips or traveling by rail. In the early days after the World Trade Center and Pentagon attacks, airlines reported a 50–75 percent drop in ticket sales.

Ironically, many opted for "unregulated" air travel instead. In January, three-quarters of private-charter operators saw their business increase, while the same period saw a 10 percent decrease in commercial air travel.

By bailing the major airlines out to the tune of $15 billion, the President and Congress prevented genuine reform of air safety from coming about through real market demand. By assisting an industry that had failed to adequately protect its clientele, the federal government not only rewarded haphazard safety procedures—it sent a loud and clear message that such conduct is the fast track to a multibillion-dollar pat on the back. Had the government allowed those airlines to fail, charter companies with established safety records could have expanded to fill the void. Other airlines would have had to quickly toe the line.

Uncomfortable with the Unregulated

Although it was FAA-controlled aircraft, not airplanes from "unregulated" private charter companies, that were flown into buildings last September, some folks in government are uncomfortable with general aviation's more laissez-faire attitude. Speaking before a Senate committee, then-Transportation Security Administration (TSA) director John W. Magaw said that big charter aircraft pose a threat because they "are almost exactly as large as the ones that were used on 9/11 and some even larger than that."

Wisconsin Senator Herb Kohl warned, "Here we've gone through the tremendous expense and inconvenience of trying to make airline flying as safe as possible, and at the same time we're . . . missing entirely on the dangers of private aircraft." Transportation Secretary Norman Mineta concurs: "We've got to take a look at [private charters]. Because when we take a look at charters, it, to me, should not be much different from scheduled service."

These concerns overshoot the runway by a mile. The 9/11 hijackers used commercial airliners, regardless of claims that they could easily have used charter planes, because the superior security techniques used by private charter companies were a sufficient deterrent. Rather than admit that central bureaucratic control of airline safety has failed, government officials seem more interested in forcing everyone under the same flawed management. In other words, while the FAA's farm dog was guarding the henhouse the fox stole the chickens—so the farmer wants to make his neighbor use the same dog.

Not surprisingly, members of the commercial airline industry would also like to see charter services brought under stricter control. According to the *Washington Post*, "The Air Line Pilots Association . . . urged the [TSA] to adopt one level of security for every type of flight, including charter and small-aircraft operators." This is not the first time that the dominant members of an industry have begged to be more heavily regulated by government. Physicians, pharmacists, truckers, railroads, broadcasters—all have been more than happy to use government power to squeeze out competition, protect their chunk of the market, raise prices, or all of the above. As Milton and Rose Friedman noted, "[I]nterested parties go to work to make sure that [regulatory] power is used for their benefit." And, they added, "They generally succeed."[4]

If private charters are forced to put their customers through the same security as commercial airlines do, they will quickly become indistinguishable from those airlines—and no longer worth the extra cost. Travelers will then simply save some money and fly commercial—and you can bet the Air Line Pilots Association is well aware of that.

Another criticism is in the way charters achieve their security. Many insulate themselves from potential threats by working only with repeat customers, by, in Clifton Stroud's words, "always knowing who you're traveling with." Other charter companies will only book large flights for reputable businesses that are highly unlikely to have terrorists on their staff. Obviously,

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these are not luxuries that commercial airlines can afford, nor are they designed to offer that character of service. But the form that a particular airline's security measures will take is not important. What is important is that *they* be ultimately responsible for the choices they make.

False Sense of Security

With all the flap over the "loophole" that charter planes get to fly through, the passive observer could be forgiven for concluding that Senator Kohl's fear about ignoring the danger of charters is valid. The truth appears to be quite the opposite. The real danger seems to be from commercial airlines that have been lulled into a false sense of (for lack of a better word) security by government regulation. Rather than bring private charter companies down to their level, we should be demanding that commercial airlines begin to emulate private charters' knack for terrorism prevention.

Many will argue, though, that regardless of the shining security record of charter companies, it just isn't feasible to leave good protection to a charter-carrier-like regime because the cost is so prohibitive. Some of the most expensive charter operators charge as much as $3,000 per hour for their services. "It really is great service," quipped Kohl, for "those who can afford it." Yet much of the expense of private charter is for its ability to put people in the air quickly and hassle-free. ExtraordinAir boasts that it can do so in as little as 30 minutes.

Still, that doesn't tell the whole tale. Prices are based on supply and demand. Right now, private charters make up a tiny percentage of overall air-travel providers. The market rate for the kind of personalized security they offer has been set by the amount their small number of affluent users are willing to pay for that kind of service. Much like the case of the automobile, only a few can have that level of comfort early on.

But greater things are never far off. Already, a New Mexico-based company called Eclipse Aviation Corporation is offering the Eclipse 500, a corporate-style jet that will offer the convenience of private travel to American families at a price that will surprise almost everyone. Utilizing new engine, structural, and electronic technologies, the company is marketing the airplane for "less than a quarter of what the least expensive corporate jet out there sells for today," with per-mile operational costs roughly equivalent to an SUV, Vern Raburn, the firm's president, told NBC's "Today" show. "The fundamental thing that makes this airplane so important, and so revolutionary, is that it offers airline performance, jet performance, all at a price . . . that is equal to a coach-fare ticket."

Not at all surprising is that production of the Eclipse 500 is currently sold out for the first three years. Clearly, innovators in the general, private air-travel industry are already responding to demand for more personalized (and thus more secure) service. Raburn sees the day coming soon when the thousands of airports dotted around the country will offer private jets for short- and long-haul trips to the average flyer. "In today's world," he said, "we actually end up through almost every single thing that we do having personal choices—except in air transportation where we're all forced to take big busses." Thanks to the daring and creativity of Eclipse Aviation, that will soon change.

We Americans can experience the freedom of flight without snooping federal security officers rummaging through our belongings and scrutinizing our government-issued ID, and still enjoy real protection, if we're willing to take some responsibility for ourselves and hold airlines to the same standard. All it takes is a private plane. □

1. Greg Schneider, "Private Plane Charters: One Way Around Air Security," *Washington Post*, June 2, 2002. Unless otherwise noted, all quotes are from this source.
2. Telephone interview with author, June 6, 2002.
3. Alan Greenspan, "The Assault on Integrity," in Ayn Rand, *Capitalism: The Unknown Ideal* (New York: Penguin Books, 1967), p. 119.
4. Milton and Rose Friedman, *Free to Choose* (San Diego: Harcourt Brace & Co., 1990), p. 201.

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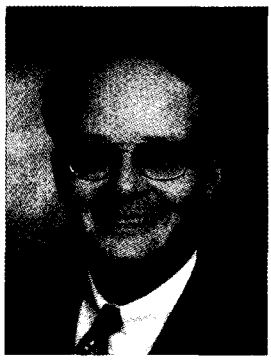

Cigarette Taxes Are Hazardous to Our Health

"In the great chess-board of human society," wrote Adam Smith in *The Theory of Moral Sentiments*, "every single piece has a principle of motion of its own, altogether different from that which the legislature might chuse to impress upon it."

With monotonous regularity legislatures are busy fine-tuning the lives and habits of millions of citizens—utterly oblivious, in most cases, to Smith's time-honored wisdom. As if keeping the peace, dispensing justice, and protecting the nation from foreign aggressors were petty, part-time assignments, nanny-state lawmakers are forever prodding us to moderate or abandon certain pastimes they say aren't good for us (even if many legislators engage in those very pastimes themselves). And if in the process of altruistically prodding us they make a few bucks for their favorite government program, well, that's just what the nanny state is really all about anyway.

If Adam Smith were with us today he could point to cigarette taxes as proof of what he wrote more than 200 years ago. Armed with the rhetoric of moral righteousness, the Carry Nations of the cigarette wars are jacking up taxes on smokes higher than smoke itself. It'll discourage a bad habit, they tell us, as they spend the revenues at least as fast as they roll in.

This past summer New York City raised its municipal cigarette tax from eight cents a pack to $1.50. New York State imposes the nation's highest per-pack tax, also $1.50, which means that $3 of every $7 pack of cigarettes in the Big Apple goes just for the government's take at the retail level. Never mind the baked-in hidden taxes from the tobacco farm to the local 7-Eleven that go into the retail price.

When Mayor Michael Bloomberg signed the latest tax hike into law at a news conference on June 30, a citizen tossed him a very cogent inquiry. According to the *New York Times*, Audrey Silk of Citizens Lobbying Against Smoker Harassment asked His Honor, "I know that you love to eat chunky peanut butter with bacon and bananas. How about I come out and start a campaign to tax that bacon that's going to cause heart disease, and tax that super-chunky peanut butter that's going to kill you?" After conferring with an expert at his side, the Mayor essentially said that smoking was different because it's addictive. Besides, the city's deficit-ridden budget needed the expected $111 million a year the $1.50 per pack would yield.

Who's really the addict here? I know of many people who have given up smoking. I don't know of *any* politicians who have given up on making money from it.

Indeed, federal, state, and local governments are the overwhelming reason why the average price of a pack of cigarettes has doubled in the past five years. In the mid-'90s my own state of Michigan tripled its tax from 25 to 75 cents. In August of this year it added another 50 cents. I hasten to add

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that my concern is not for my own pocketbook; I've never smoked anything but a paycheck. My first concern is personal liberty, which, if it means anything, surely means the right to enjoy risky pursuits like hang-gliding or even smoking as long as your actions don't aggress against others.

But more to the point, the ever-higher taxes on cigarettes are counterproductive in certain crucially important ways. As Adam Smith suggested, people are going to find ways to do what they want to do even if their friendly congressman would prefer that they didn't. Cigarette taxes are producing some of the same effects that alcohol prohibition brought in the 1920s and early '30s and that drug prohibition brings today.

In his 1963 book, *How Dry We Were: Prohibition Revisited*, Henry Lee explained what happened between 1919 and 1933 when alcohol was banned: The law drove the production and consumption of booze underground, and people who wanted to either make or drink the stuff turned to crime (and amazing creativity) to satisfy their desires. Profits in the trade soared, thanks to the ban itself. Smuggling became an art form. Likewise, today's endless and costly drug war has produced side effects that even a diehard drug warrior can't deny: an entire subculture that guarantees both violence and drugs to whoever wants them.

Legal Loophole

And so it is with cigarettes. It will be ever more so if taxes reach prohibitive levels. At least one legal loophole for avoiding the taxes is helping to keep the cigarette trade relatively peaceful for the moment: Indian reservations can sell cigarettes tax-free and sales at their stores and websites are soaring.

Meantime, low-tax, tobacco-growing states like Kentucky and North Carolina are magnets for smugglers who buy smokes there and truck them to high-tax, high-price states like Michigan. Authorities concede that smuggling is on the rise. An untold and growing volume of tax dollars is being spent to fight it.

In a recent commentary for the Mackinac Center for Public Policy, researcher James Damask revealed an especially seamy and disturbing side of cigarette-tax evasion. On July 21, 2000, 13 months before the World Trade Center attack, FBI agents raided a house in Charlotte, North Carolina, used as a smuggling base. Inside they found cash, weapons (including shotguns, rifles, and an AK-47), documents written in Arabic—and cigarettes. Lots of cigarettes. Why? Because, Damask says, "the operation exploited the tax differential between North Carolina, which has low cigarette taxes at 5 cents a pack, and Michigan, with high taxes at 75 cents a pack" (now $1.25).

Apparently, the smugglers would drive the 680 miles from Charlotte to Detroit in a rented van with 800 to 1,500 cartons of cigarettes purchased with cash in North Carolina. The cigarettes would then be sold to convenience stores in Detroit, which sold them to customers. Authorities say that each trip—which required absolutely no special skills for the 13-hour drive—would net $3,000 to $10,000. The profits would then be shuttled back to Charlotte. The homeowner and recipient of the profits was a man believed to have ties to foreign terrorist organizations.

The lesson? Like Prohibition, high taxes lead to big profit opportunities for people who break the law, which leads to smuggling, which in turn invites some pretty nasty people into the business. Politicians who say they're helping our health by taxing cigarettes so heavily are not counting all the costs of their effort with as much care as they count their tax revenue. And Adam Smith was right as rain. □

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Are Dietary Guidelines a Public Good?

by Robert E. Wright

Two federal agencies, the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services (HHS), have published *Dietary Guidelines for Americans* every five years since 1980. Those guidelines, the latest version of which appeared in 2000, urge Americans to (1) "balance the food you eat with physical activity—maintain or improve your weight," (2) "choose a diet with plenty of grain products, vegetables, and fruits," (3) "choose a diet low in fat, saturated fat, and cholesterol," (4) "eat a variety of foods," (5) "choose a diet moderate in salt and sodium," (6) "choose a diet moderate in sugars," and (7) drink alcohol in moderation, if at all.

At first glance the guidelines, which purport to help Americans to "promote health and prevent disease," may appear to be a valuable public service, one well worth the cost to taxpayers. On reflection and investigation, however, it is not at all clear that dietary guidelines are a public good, that is, a product better produced by government than by the market. Is it efficient for taxpayers to pay the government to tell them what they should and should not eat? The vanishing budget "surplus" has again made such questions timely and important; the forthcoming Social Security crisis makes such questions crucial.

Like many other government programs, the diet guidelines have proven a miserable failure. The total cost of producing them is hefty. Precise figures for the *Guidelines* are not readily accessible. Various government agencies annually fund hundreds of studies related to the health effects of human diet. Conservatively, the production of the guidelines costs Americans tens of millions of dollars per year.

On the other side of the equation, the guidelines' benefits are at best extremely small and at worst negative. By the government's own measures, the average American is more obese than ever. According to NIH-funded dietary scientist Dr. Barbara Levine, "obesity is an American epidemic." "Fifty-five percent of us are overweight," she stated in a public hearing in 2000, "and certainly our children are getting more obese as we speak."

Ironically, a major contributor to our increased girth may be the government's guidelines, or more precisely, Americans' adherence to them. Some government studies indicate that many Americans attempt to follow the guidelines. Interestingly, other government pronouncements presume that Americans' diets are not "changing in the direction of the Dietary Guidelines' recom-

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mendations" *because of* "the increasing prevalence of obesity." ("Q and A's on Dietary Guidelines for Americans, 2000," Center for Nutrition Policy and Promotion, June 3, 2000.) Of course such presumptions beg the question. It is not at all clear, after all, that the guidelines accurately reflect the dietary needs of all, or even most, Americans.

Special-interest groups, like the Salt Institute and the Sugar Association, two producer-funded advocacy groups, often cast doubt on the scientific validity of the government's guidelines. Such groups are by definition biased; obviously, they have incentives to maintain demand for salt and sugar. Biased views, however, are not necessarily entirely wrong. In fact, special interests often provide valid, and much-needed, criticism of scientific assumptions and research methodologies.

Much of the funding for dietary research, after all, ultimately comes from the federal government, which itself is little more than a special interest and a tool for special interests. Why do the government guidelines endorse the consumption of cow's milk and frown on the consumption of sugar and sodium? One answer may be because dairy producers managed to "capture" the regulatory agencies and to steer them toward the endorsement of milk. Robert Cohen of the Dairy Education Board raised the same point in public hearings prior to the publication of the 2000 *Guidelines*. "I'd like to ask you, since this is the first time I've been asked who funds me, who funds you, Dr. Kennedy? Who funds you, Dr. Watkins and Lurie and Huberto Garza . . .?" (He was addressing Eileen Kennedy, USDA Deputy Undersecretary of Research, Education and Economics; Shirley Watkins of the USDA; Dr. Nicole Lurie of HHS; and Dr. Garza of the USDA.)

Cohen's answer: dairy producers.

Highly Politicized Process

Indeed, the fact that the guidelines were subjected to public hearings before their publication suggests that the process of producing them is highly politicized. A particularly enlightening instance of the political nature of the process was the suggestion by a fruit-and-vegetable-producers association, the Produce for Better Health Foundation, that the guidelines state that Americans should "enjoy" rather than merely "choose" five to nine daily servings of fruits and vegetables. The Foundation, in effect, was urging the government to tell Americans to eat their spinach and *like it too*!

The issue of self-interest, however, is even more complex. Deputy Undersecretary Kennedy responded to Cohen's funding question by stating that "we are funded by the American taxpayer." That does not mean, however, that the group that composed the guidelines was acting in the best interests of those taxpayers. Governments, and the U.S. government is no exception, tend to attempt to enlarge their powers and influence over time, if only to ensure their continued existence. Since World War I, the U.S. government has been wildly successful at extending its influence, power, and budget. Federal receipts as a percentage of aggregate output, for instance, jumped from its historical level of less than 5 percent to about 20 percent per year, with much of the increase coming during the New Deal and World War II. The government has used its increased receipts to fund all sorts of initiatives, programs, and research that extend the boundaries of its influence all the way into its citizens' digestive systems.

If this view is correct, the government is more interested in producing dietary guidelines, *any guidelines*, than in producing "truth." Like the salt and sugar producers, in other words, the government is acting in its own self-interest and not in the general interest, if such a thing exists. There is little wonder, then, that dietary research methods are deeply flawed and that research findings are often inconclusive, contradictory, or controversial.

Ignoring Diversity

The biggest problem is that the government studies fail to recognize the immense

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genetic diversity of the American population. The special-interest groups also miss this point, probably because they want to maintain as wide a market for their respective products as possible. The government does admit that "individuals vary in their responses to dietary changes." However, the government concludes from this fact that "health improvements will be greater for some than others" if its guidelines are followed. Once genetic diversity is admitted, it is not clear why the effects of the government's guidelines for some, or even for many, may not in fact be negative.

Although the government is acutely aware of the mostly superficial outward manifestations of this genetic diversity—Americans vary widely in hair and skin coloration, for instance—government-sponsored research pays precious little attention to deeper, more fundamental genetic differences. Part of the reason for this may be the controversy surrounding genetic differences in intelligence. Skepticism of claims regarding racial differences in the genetic component of intelligence is well founded. However, other sorts of genetic differences, most of which are probably not rooted in race, should not be dismissed on that account. In other words, if the government were truly interested in creating truth, and not in merely extending its influence, its studies would investigate the possibility that all Americans do not metabolize food in the same way.

The body of anecdotal evidence which suggests that large differences in individual metabolic processes exist is enormous. "Fad diets" actually work, *for some people*. The government diet also works, but again only for a minority of Americans. Some Americans thrive by eschewing all animal products. Others find the occasional beef, pork, or chicken entrée beneficial. Still others eat little else but meat and cheese and live long, healthy lives.

Evolutionary theory also suggests that individual metabolisms may be markedly different. Nature "selects" those individuals whose characteristics, including their ability to metabolize different types of foods, best match their environments. Americans who trace their distant roots to Arctic climates, for instance, may very well be capable of metabolizing more fat than Americans whose ancestors dwelled for many millennia in areas rich in high-carbohydrate foods like maize, rice, or other grains.

Interestingly, there is little relationship between race and likely ancestral dietary sources, so there is little reason to expect that outward appearances can signal optimal diets. For instance, some areas of Africa are rich in carbohydrate-based foods, while others produce more meats, oils, and nuts. Because humans cannot know the region or diets of their distant ancestors with any degree of certainty, genetic tests appear to be the best means of scientifically determining each individual's optimal diet. Such tests are not yet available and, of course, it is not at all clear that Americans could not discover their respective optimal diets for themselves. In light of this evidence, a more intellectually honest approach for the government to take would be to encourage Americans to seek the dietary mix that best meets their individual circumstances, not to present cookie-cutter guidelines from on high.

Private Market for Dietary Information

An even better approach would be for the government to leave the production of dietary advice to the private sector and to abandon its dietary research efforts entirely. Human beings survived for millions of years without the aid of government-sponsored dietary research. Why government intervention should suddenly have become necessary in 1980 is not at all clear. Some may contend that the increased consumption of processed foods, many of which are chock full of refined sugars and sodium, made government guidance important. If the government's guidelines helped to improve Americans' health, we might agree. But the government's efforts failed and may even be exacerbating health problems by failing to account for individual genetic differences.

The government's failure to address the dietary needs of many, if not most, Ameri-

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cans can also be inferred from the fact that a private market for dietary information exists. Each year diet gurus sell millions of copies of books hawking various so-called fad diets. Americans also consume millions of copies of magazines featuring diet-related stories. Like most consumer markets, the dietary-information market offers Americans low-, medium-, and high-quality products. Unlike our paternalistic government, we trust that Americans can decide among the products themselves.

Some may think that an American Institute for Dietary Research might be in order. But that's unnecessary. If their minds are left unclouded by specious, but authoritative-sounding government guidelines, Americans will be free to discover which diet works best for them. Obesity will probably decrease and health will improve. As an added benefit, a little extra "fat" can be trimmed from the government's budget. □

Choice and Diet

The idea of a "national diet" assumes away problems associated with individual differences. . . . Virtually all nutritional requirements can be met from a range of foods. Thus, mere knowledge of nutritional requirements reveals little information about which specific foods will be chosen by individuals to consume to meet these requirements since food consumption by individuals is heavily influenced by individual taste as well as by nutrient availability. The most reliable information we have about people's food preferences is revealed through their market choices.

In a free society, welfare is defined in terms of the welfare of individuals. This individualistic approach assumes that the individual consumer is the best judge of his own welfare. The individualistic ethic implies free choice of diet.

—E. C. Pasour, Jr.,
"Nutrition Planning,"
The Freeman: Ideas on Liberty,
June 1979

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Would You Buy a New Car from Procrustes?

by P. Gardner Goldsmith

During his remarkable adventures, the Greek hero Theseus ranged through beautiful vistas, formed valuable alliances, and battled incomprehensible monsters from beyond the edge of creation. One of the most horrifying was a determined sociopath named Procrustes, whose sole desire was to insure that travelers who slept in his home had no trouble fitting into his beds. Those who were too short were stretched on the rack. If they were too long, he cut off their feet.

Theseus dispatched the horrific creature with ease, moving unfazed to new adversaries and exploits in the landscape of Greek mythology.

In the contemporary world of American politics, he might not have such success, because the philosophy of Procrustes has been reborn in an army of often-incomprehensible figures carrying out their deeds in the U.S. Congress.

Procrustes was infamous for taking what would normally be a mundane, inconsequential matter of bed size—a decision based on an individual sleeper's own choice and preference—and turning it into an arcane, bizarre exercise in coercion. Choice to him was unthinkable. He had one size bed, and he made people fit it, rather than making his bed choices vary to accommodate his patrons. The majority of modern politicians view the marketplace in much the same way. To them, variation reflects risk; choice indicates danger. Competition, volition, and freedom are words to be feared, corrupted, or banished from our contemporary lexicon; and the idea that a business should be allowed to cater to the demands of consumers is *verboten*.

Therein lies the deviant inspiration for the government's latest creation, the ironically titled "Freedom CAR."

Touted as a great leap forward in government efficiency, the Freedom CAR project (CAR stands for Cooperative Automotive Research) was created to replace a Clinton administration program. Under President Clinton, the less colorfully titled "Partnership for a New Generation of Vehicles" (PNGV) had as its original objective to develop an affordable, 80-mpg family vehicle by 2004.

Most objective observers predicted that the program was not going to achieve its goal. That the PNGV targets for emissions were set *higher* than the Environmental Protection Agency's low, stringent goals for autos in 2004 might have been a strong indication of trouble. That the government has spent $814 million on PNGV since its inception on September 29, 1993, with no discernible results, is also significant.

In remarks on the Freedom CAR program delivered in Detroit last January, Energy Secretary Spencer Abraham explained that

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Thanks to Freedom CAR, families will be able to drive right through to Utopia, picking up Thomas More as he hitchhikes along the way.

the goal of the "public-private partnership" is to "promote the development of hydrogen as a primary fuel for cars and trucks, as part of our effort to reduce American dependence on foreign oil."

"Under this new program," he continued, "the government and the private sector will fund research into advanced fuel cell technology which uses hydrogen to power automobiles without creating any pollution."

In touting the benefits of the new program, Abraham was led to admit the failures of the old one. "[I]t wasn't at all clear this vehicle would appeal to consumer tastes," he confessed.

This is no surprise. If it were clear that an 80-mpg auto would appeal to the consumer, there would have been no need for government to fund its development. Private entrepreneurs with the ability to recognize the benefits of providing such a product, and with the honor to risk *their own* money on the venture, would have been working on it themselves if there were any potential benefit to consumers. The fact that there was insufficient interest to inspire such product development on a large scale reveals the backward ethics of taking the money of Americans for something they would not have voluntarily bought.

According to Abraham, Freedom CAR will mean "more fuel-efficient cars and trucks that are cheaper to operate." Thanks to Freedom CAR, families will be able to drive right through to Utopia, picking up Thomas More as he hitchhikes along the way.

Efficient at What?

Unfortunately for Mr. Abraham, and for every U.S. taxpayer, the true concept of efficiency is completely lost in the bombast of the contemporary bureaucrat. The measurement of "efficiency" has many different applications, and its calculation is not only composed of multitudinous factors, it is purely subjective. The concept of fuel efficiency cannot be separated from the principle of economic efficiency, and economic efficiency can only be properly determined by the individual who owns the money, and/or property, involved. Only he, operating on his own prerogatives, can make the proper determinations as to what expenditure of his time, energy, skill, or money will be most productive toward achieving his goals.

By initiating the Freedom CAR program, Abraham overwhelms the interests of the individual with his own. Ironically, the decision to fund the Freedom CAR with taxpayer money means that the freedom of consumers to make their own choices has been curtailed.

As with the PNGV, if the Freedom CAR program were an efficient use of capital, there would be no need to use money coerced from individuals to pay for any of it. The development of a hydrogen-cell engine would be supported by entrepreneurs and investors willing to invest in something economically productive. Economic efficiency is only, and *can only be*, determined by individual consumers making their own decisions with their own cash.

Supporters of government-developed "alternative fuels" cite two benefits of their agenda. The first is that these mandated alternatives will help reduce our dependence on foreign oil. According to Abraham, America currently uses approximately 10 million barrels of foreign oil each day. Additionally, boosters of the government approach believe that increased use of alternative fuels will reduce air pollution and the

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"greenhouse effect" supposedly caused by the burning of carbon-based petrochemicals. Government subsidies of, and regulations favoring, the corn-based panacea ethanol are all the rage among agribusinesses and left-wing environmental groups lobbying in Congress.

But what they overlook is the market and its ability to reflect the individual interests and concerns of real people. In the real world, oil is still the most cost-effective source of energy. When the costs of using oil (including environmental impacts) affect productivity to the extent that developing alternative fuels becomes economically *more* productive, the spontaneous response of people working for their own benefit will push that development. Until then, *any* government choices that supersede individual choices with one's own money are, by their nature, *less* efficient.

They are also dangerous. Implementing government solutions over large populations of people with unique needs is fraught with troubles. Ethanol is actually a net energy *loser*, requiring more fuel to manage the soil, grow and harvest the corn, and refine than it actually produces for consumers.[1] In addition, while it reduces air pollution in warmer climates and seasons, it increases smog in colder weather.[2] Until it becomes more economically efficient to produce, and less problematic when used, people will wisely not spend vast amounts of their money on ethanol-based energy. Meanwhile, in the classic tradition of Procrustes, the government feels compelled to force these detrimental "solutions" on everyone.

Secretary Abraham has said that in addition to providing huge savings and more efficient vehicles, "[A] vision like Freedom CAR will bring consumers more choice." He ought to learn that choice is only reflected in a free and open marketplace, unshackled by government dictates and preferences that distort the true flow of useable capital.

Until he understands that fundamental rule, he will continue to operate like a modern Procrustes, forcing his preferences on everyone else. Let's hope he and his political associates never go into the hotel industry. That could be truly painful. □

1. See Edmund Contoski, *Makers and Takers* (Minneapolis, Minn.: American Liberty Publishers, 1997), pp. 197–99.
2. Leon Drouin Keith, "California Sues EPA Over Ethanol," Associated Press, August 13, 2001.

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Psychiatry's Unholy Trinity—Fraud, Fear, and Force: A Personal Account

by Leonard Roy Frank

In 1959 a revolution took place in Cuba, the Cold War was in full throttle, the Eisenhower era was drawing to a close, and I moved to San Francisco where I would soon find myself in a hellish world of imprisonment and torture.

Born and raised in Brooklyn 27 years earlier, I had graduated from the University of Pennsylvania's Wharton School. After a two-year hitch in the Army, I managed and sold real estate in New York City and southern Florida for several years. Despite a poor record, I continued working in real estate in San Francisco.

A few months into my new job, things began to change for me—more internally, at least at first, than externally. Like so many of my generation, I was highly conventional in thought and lifestyle, and my goal in life was material success—I was a '50s yuppie. But I began to discover a new world within myself, and the mundane world seemed, comparatively speaking, drab and unfulfilling. I lost interest in my job and, not surprisingly, soon lost the job itself. Thereafter, I spent long hours reading and reflecting on nonfiction books that I found in secondhand bookstores and at the public library.

The book that influenced me most at that time was *An Autobiography: The Story of My Experiments with Truth* by Mohandas K. Gandhi. I adopted for myself his principles of nonviolent resistance, his interest in religion, and his practice of vegetarianism. In that book and other writings of his, Gandhi referred to the works that had helped shape his life. I was soon reading *The Bhagavad Gita,* the *New Testament,* Henry David Thoreau's essay on "Civil Disobedience," Leo Tolstoy's *The Kingdom of God Is Within You,* and the essays of Ralph Waldo Emerson. In keeping with the subtitle of Gandhi's autobiography, I started my own experimenting, and this led to a complete revaluation of my previously held values. Toward this end I broadened my reading to include, among many others, the *Old Testament,* Lao-tzu (*Way of Life*), William James (*Varieties of Religious Experience*), Henri Bergson (*Two Sources of Religion and Morality*), Joseph Campbell (*Hero with a Thousand Faces*), and the writings of Abraham Lincoln, Carl Jung, Arnold Toynbee, and Abraham Heschel.

Leonard Frank (lfrank@igc.org) co-founded the Network Against Psychiatric Assault, based in San Francisco, and edited The History of Shock Treatment *and three books of quotations:* Influencing Minds: A Reader in Quotations, Random House Webster's Quotationary, *and* Random House Webster's Wit & Humor Quotationary.

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The learning acquired during this exciting, wonder-filled time advanced my self-awareness and my understanding of the world. During this transitional period, however, my parents, who lived in Manhattan and visited me several times in San Francisco, became concerned with the changes they perceived in me. That I was living on my meager savings and not "gainfully employed" upset them. Perhaps more important, my newfound spiritually centered beliefs and vegetarian practices challenged them in ways they couldn't handle. We were at loggerheads: if one side was right, the other had to be wrong, and neither side was willing to compromise.

The situation seemed to call for a parting of the ways, at least for a time. But my parents weren't willing to back off.

They attributed the rift between us to my having a mental disorder. The changes I regarded as positive they regarded as symptomatic of "mental illness." They urged me to consult a psychiatrist. I had done some reading in psychology but, while finding a number of valuable ideas, had rejected its overall approach as being too narrow—psychotherapy was not for me. For more than two years the struggle between my parents and me intensified. Eventually, because I wouldn't see a psychiatrist, my parents decided to force the psychiatrists on me. The way that was and still is being done in our society is by commitment, a euphemism for psychiatric incarceration. I was locked up at Mt. Zion Hospital in San Francisco on October 17, 1962.

During the same week that the world's attention was focused on the Cuban Missile Crisis and the possibility of nuclear war, two physicians in a San Francisco hospital were focused on me and the possibility of my being mentally ill. They decided I was and gave me a "tentative diagnosis" of "schizophrenic reaction." The case-history section of the "Certificate of Medical Examiners" they signed read in full as follows: "Reportedly has been showing progressive personality changes over past 2 or 3 years. Grew withdrawn and asocial, couldn't or wouldn't work. Grew a beard, ate only vegetarian food and lived life of a beatnik—to a certain extent."

"Symptoms" Listed

On October 20 I was sent to Napa State Hospital, northeast of San Francisco, and from there, on December 15, to Twin Pines Hospital in Belmont, a suburb south of San Francisco, where I remained through the first week of June 1963. Early on, I was diagnosed as a "paranoid schizophrenic," a label reserved not only for serial killers but also for almost anyone else in a mental institution who refuses to knuckle under to psychiatric authority. Scattered throughout my medical records, 143 pages of which I obtained in 1974, were the "symptoms" and observations that, according to psychiatric ideology, supported the diagnosis. These included "condescending superior smile"; "vegetarian food idiosyncrasies"; "apathetic, flat affect"; "has a big black bushy beard and needs a haircut, he is very sloppy in appearance because of his beard"; "refuses to shave or to accept inoculations or medication"; "patient declined to comment on whether or not he thought he was a mentally ill person"; "no insight"; "impaired judgment"; "stilted, brief replies, often declines to answer, or comment"; "autistic"; "suspicious"; "delusions of superiority"; "paranoid delusions"; "bizarre behavior"; "seclusive"; "withdrawn, evasive and uncooperative and delusional"; "negativism"; "passively resistive"; "piercing eyes"; and "religious preoccupations."

Soon after being imprisoned, psychiatrists tried to gain my consent to shock treatment—at first electroconvulsive treatment (ECT) but after being transferred to Twin Pines, "combined insulin coma-convulsive treatment." When I was "extremely resistive" to undergoing the latter procedure, the hospital filed for a court order authorizing force in administering it. In the closing paragraph of the seven-paragraph letter to the court, the treating psychiatrist wrote, "In my professional opinion, this man is suffering from a Schizophrenic Reaction, Paranoid Type, Chronic, Severe, but it is felt he should have the benefit of an adequate course of treatment to see if this illness can be helped. In view of the extremes to which the patient

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carries his beliefs it is felt that the need of hospitalization and treatment under court order is a necessity as he is dangerous to himself and others under these circumstances."

On January 10, 1963, after a hearing at which I was present, the Superior Court of California in San Mateo County "ordered [me] committed to Twin Pines Hospital." The next day, the series began; there were in all 50 insulin coma treatments (ICT) and 35 electroconvulsive treatments.

Combined insulin coma-convulsive treatment was routinely administered to "schizophrenics" in the United States from the late 1930s through the mid-1960s. ECT was sometimes applied while the subject was in the coma phase of the ICT; sometimes the procedures were administered on separate days. Individual insulin sessions lasted from four to five hours. Large doses of injected insulin reduced the blood's sugar content triggering a physiological crisis manifested in the subject by blood pressure, breathing, heart, pulse, and temperature irregularities; flushing and pallor; incontinence and vomiting; moans and screams (referred to in the professional literature as "noisy excitement"); hunger pains ("hunger excitement"); sobbing, salivation, and sweating; restlessness; shaking and spasms, and sometimes convulsions.

The crisis intensified as the subject, after several hours, went into a coma. Brain-cell destruction occurred when the blood was unable to provide the sugar essential to the brain's survival; the sugar-starved brain then began feeding on itself for nourishment. The hour-long coma phase of the procedure ended with the administration of carbohydrates (glucose and sugar) by mouth, injection, or stomach tube. If the subject could not be restored to consciousness by this method, he went into what were called "prolonged comas," which resulted in even more severe brain damage and sometimes death. According to the United States Public Health Service Shock Therapy Survey (October 1941), 122 state hospitals reported an insulin coma treatment mortality rate of 4.9 percent—121 deaths among 2,457 cases.[1]

After gaining my freedom, I tried to find out how psychiatrists justified their use of ICT. One of the clearest statements I uncovered came from Manfred Sakel, the Austrian psychiatrist who introduced the insulin method in 1933 and, after arriving in the United States a few years later, became its most active promoter. In a popular book on the state of psychiatry published in 1942, Dr. Sakel was quoted as follows: "With chronic schizophrenics, as with confirmed criminals, we can't hope for reform. Here the faulty pattern of functioning is irrevocably entrenched. Hence we must use more drastic measures to silence the dysfunctioning cells and so liberate the activity of the normal cells. This time we must *kill* the too vocal dysfunctioning cells. But can we do this without killing normal cells also? Can we *select* the cells we wish to destroy? I think we can" (italics in original).[2]

Lost Memories

I didn't see it that way. For me, combined insulin coma-convulsive treatment was an attempt to break my will, to force me back to an earlier phase of my spiritual and intellectual development. It was also the most devastating, painful, and humiliating experience of my life. Afterwards, I felt that every part of me was less than what it had been. Except for memory traces, some titles of the many books I had read, for example, my memory for the three preceding years was gone. The wipeout in my mind was like a path cut across a heavily chalked blackboard with an eraser. I did not know that John F. Kennedy was president although he had been elected two and a half years earlier. There were also big chunks of memory loss for experiences and events spanning my entire life; my high school and college education was effectively destroyed. I came to believe that shock treatment was a brainwashing method. Some years later, I found corroboration for this opinion in a professional journal describing ECT's effect on patients by two psychiatrist-proponents of the procedure: "Their minds are like clean slates upon which we can write."[3]

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Aside from being a flat-out atrocity, the use of combined insulin coma-convulsive treatment necessarily involved the violation of certain human rights; some are proclaimed in the Bill of Rights, all are cherished in a free society:

Freedom from "cruel and unusual punishments" (Eighth Amendment). If insulin coma treatment is not a torture, nothing is. Readers of the professional literature, however, receive barely a hint of this reality. The barbaric aspects of the procedure, if mentioned at all, are glossed over in understatement and euphemism. For example, one psychiatrist cautioned against allowing new insulin patients to see other patients further along in their treatment, thus saving them "the trauma of sudden introduction to the sight of patients in different stages of coma—a sight which is not very pleasant to an unaccustomed eye."[4]

I recall the horror of coming out of the last coma: severe hunger pains, perspiration, overwhelming fear and disorientation, alternating phases of unconsciousness and consciousness, strangers hovering over my strapped-down body (none of whom I recognized although I had been thrown in with them months before), being punctured with needles, heavily sugared orange juice ravenously drunk, and later being held up by one or two attendents in a shower where the filth was washed away. Brain damage caused by the treatments destoyed my memory of what the previous sessions had been like.

However, I remember what happened a week or two after completing my series when, having returned for lunch from "occupational therapy," I was sitting in the day room that was separated from the insulin-treatment area by a thick metal door. Suddenly I heard an indescribable, otherworldly scream. The metal door had been left slightly ajar and one of the new patients, a young musician, was undergoing insulin coma down the corridor on the other side of that door, and he was venting his pain. Almost immediately an attendent shut the door tight, but the scream, now muffled, lingered on for another few seconds. I don't recall any of my own screams; I will never forget his.

Freedom of thought (implicit in the First Amendment). The words of Oliver Wendell Holmes Sr. ring as true today as when he first wrote them in 1860: "The very aim and end of our institutions is just this: that we may think what we like and say what we think."[5] The brain-damaging force of insulin coma is second only to the lobotomy operation; it impedes the ability to think, to create, and to generate ideas. Every ICT survivor experiences impaired thinking and knows what it means to lose memories, words (you have the idea but can't call to mind the word to fit it), and trains of thought—not just once in a while, but repeatedly, hour after hour, day after day. I have keenly felt these losses.

Freedom of religion (First Amendment). As noted above, the phrase "religious preoccupations" was among the symptoms recorded in my psychiatric records. One of these preoccupations concerned my beard, which the staff at both Napa State and Twin Pines Hospitals had been urging me, without success, to remove. In the midst of the series—after I had undergone 14 insulin comas and 17 electroshocks—the treating psychiatrist wrote my father, "In the last week Leonard was seen by the local rabbi, Rabbi Rosen, who spent a considerable period of time with him discussing the removal of his beard. I felt it was desirable to have the rabbi go over it with him, as Leonard seems to attach a great deal of religious significance to the beard. The rabbi was unable to change Leonard's thinking in this matter."

At this point, the San Francisco psychiatrist who had been advising my father was brought in to interview me. After noting in the "Report of Consultant" that I was "essentially as paranoid as ever," he recommended that "during one of the comas his beard should be removed as a therapeutic device to provoke anxiety and make some change in his body image. Consultation should be obtained from the TP [Twin Pines] attorney as to the civil rights issues—but I doubt that these are crucial. The therapeutic effort is worth it—inasmuch that he can always grow another." On March 11, the

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"Doctor's Orders" read: "Pts beard to be shaved off & to be given hair cut—Observe very carefully today & tonite for any unpredictable behavior re suicidal or elopement [escape] REJ." The same psychiatrist wrote my father ten days later, "Leonard's beard was removed this last week which caused him no great amount of distress. . . ." The shock therapy in combination with the beard-shaving therapy "worked": I was soon shaving on my own. I have no direct memory of the struggle over my beard or of even having had a beard during this period.

Right to be let alone. In a 1928 Supreme Court decision (*Olmstead v. United States*), Associate Justice Louis D. Brandeis wrote, "The makers of our Constitution . . . conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." Without having been proved guilty of violating anyone else's rights, I had been deprived of my freedom and made to undergo corporal punishment disguised as medical treatment. In the truest sense of the term, I was minding my own business, exercising my right to be let alone. As a young man, I thought that in the United States this right was protected. I was wrong. That was 40 years ago, but it's still happening as literally millions of innocent people every year are being locked up, for short and long periods of time, in psychiatric facilities where their rights are trampled on and they are subjected to psychiatric treatment against their will or without their fully informed consent.

Aside from the serious and permanent memory loss, other effects of those nearly eight months of confinement and forced treatment include a general slowing of the thought processes and a loss of drive and stamina. But by psychiatric standards, I am still "essentially as paranoid as ever." I still have my "vegetarian food idiosyncracies." I have regrown my "big black [now graying] bushy beard." And, what is more, I have maintained all my "religious preoccupations." □

1. Franklin G. Ebaugh, "A Review of the Drastic Shock Therapies in the Treatment of the Psychoses," *Annals of Internal Medicine*, March 1943, p. 294.
2. Marie Beynon Ray, *Doctors of the Mind: The Story of Psychiatry* (Boston: Little, Brown, 1942), p. 250.
3. Cyril J.C. Kennedy and David Anchel, "Regressive Elecric-Shock in Schizophrenics Refractory to Other Shock Therapies," *Psychiatric Quarterly*, vol. 22, 1948, p. 318.
4. Alexander Gralnick, "Psychotherapeutic and Interpersonal Aspects of Insulin Treatment," *Psychiatric Quarterly*, vol. 18, 1944, p. 187.
5. Oliver Wendell Holmes Sr., *The Professor at the Breakfast Table* (New York: E.P. Dutton, 1931 [1860]), chapter 5.

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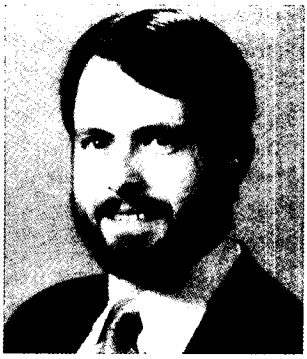

Teetering on the Democratic Edge

ANKARA, Turkey—"The main obstacle to democracy is not Islam, but Kemalism," says Atilla Yayla, the unassuming head of Turkey's Association for Liberal Thinking (ALT). While Turkey has done better than any other Muslim country in mixing Islam and secularism, as a democracy it remains a work in progress.

Where Turkey ultimately ends up is particularly important, given its potential membership in the European Union (EU). Membership could remake Turkey. A number of Turks are liberal, in a classical sense, supporting individual liberty, economic freedom, and political democracy. They believe the lure of EU membership is the best way to enable their country to escape its authoritarian legacy. Turkey is a nominal democracy, with regular elections. Yet the military holds ultimate power, upending governments and dissolving political parties. Professor Soli Ozel of Istanbul's Bilgi University commented sardonically: "they have the bayonets and we don't."

Turkey's reigning ideology is statism, embodied in the nation's founder, Kemal Ataturk. "Kemalism is treated like a religion," says Yayla, also a university professor: "In this way, Kemalists are more religious than Islamacists." It is hard to find a room in Turkey without Ataturk's photo; his overpowering, square-block memorial in Ankara is a shrine. Dissent is highly constrained. Criticism of the military is simply banned—indeed, the provision was tightened earlier this year to bar criticism of individual soldiers (meaning, in practice, leading generals).

Criticism of other officials can be almost as dangerous. A magazine supported by Yayla's Association criticized a supreme court ruling kicking religious conservatives out of politics. ALT's publisher (Liberté Publication) and the author found themselves subject to a lawsuit and now face ruinous damages.

Academia offers no security. Ozel nonchalantly speaks of "immense pressure by the government" because the private university is seen as having "too many leftists and liberals, allowing women to wear head scarves, and talking about the Kurds." He expects the school to survive the attacks, but "we are on our own."

The government also controls the economy, creating a class of businessmen dependent on political subsidies. One cause of Turkey's recent economic crisis is a state banking system that lost billions while shoveling money to favored interests. The International Monetary Fund required Turkey to liquidate many of these banks as a condition for receiving aid last year, but much remains to be done. Ankara still needs to privatize state enterprises and eliminate barriers to foreign investment. Despite much talk of reform, "you don't really have a political party that represents economic liberalization," complains Mustafa Sayinatac,

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Corporate Affairs Director for the Cargill corporation.

All these problems run back to Turkey's overarching philosophy of government. Gokhan Capoglu, a former member of parliament and now professor at Bilkent University, argues that "we have to achieve a liberal democracy. I'm speaking of the rule of law, separation of powers, accountability to the rules. What is lacking in this country is accountability." More fundamentally, suggests Yayla, "Without dismantling Kemalism, I don't think there can be a real democracy, a real market economy." Democracy is important, but it is only secondary. More basic is liberalism, with its commitment to human dignity and freedom.

There is popular support for change. Ozel says there are "liberal people in most every political party," though no party has yet taken up the reform cause. Fuat Keyman, an associate professor at Bilkent University, points to the gap between the "social and economic forces pressing for a more liberal Turkey, a more democratic Turkey," and "existing parties which have no ability to deal with tense problems."

Thus, liberal-minded Turks tend to look outside for help. Ozel argues: "If the EU were to accommodate Turkey, the entire context of politics would change." Yayla says simply: the EU "is our hope."

Nationalist Reaction

But, worries Ozel, "Just make sure the EU doesn't screw this up." Alas, with Europe preparing to judge the adequacy of Turkish political reform, demanding abolition of Turkey's death penalty, and addressing the Cyprus issue, there's no guarantee that it won't overreach, sparking a nationalist reaction in Ankara.

Nor will pressure from Washington for economic and political reform necessarily work out any better. Warns Capoglu: an open endorsement would risk "making the same mistake as in other countries," when people ended up "associating the U.S. with unpopular governments."

Moreover, foreign pressure will have an impact only if there is a domestic constituency for reform. That is the ALT's mission.

Yayla emphasizes that his group is not a political party. "We are trying to influence politics indirectly through ideas. We are not for political parties but for liberal politics." Indeed, ALT has "contact with members of all parties," including "the Islamic-oriented. They like us because they know we respect their rights." Although Yayla is not religious, he chides Turkey for repressing religious expression in the name of secularism and the EU for ignoring that assault on human liberty. Headquartered in a small, four-bedroom suite in a central neighborhood in Ankara, ALT employs five staffers. Formally organized in 1994, it seeks to spread market-liberal ideas among the young. It has helped publish 65 books, starting with F.A. Hayek's *The Road to Serfdom* in 1995.

The Association also offers two quarterly magazines, underwrites a student journal, runs an Internet magazine, hosts a series of forums and seminars on classical-liberal thought, organizes two annual academic conferences, and works with like-minded groups in the United States and Europe. "It is good to know that we have international friends," he observes. ALT's refreshing perspective is captured by its website. Yayla emphasizes that the Association is careful to follow the law, which limits its ability to accept money directly from foreign groups. "Anything you do is risky. Any time you can be charged for anything," he says. But "if you are too cautious, you can't do anything." Luckily, the government recognizes that ALT is nonpolitical and nonpartisan.

Turkey's potential is vast. Strategically located and filled with entrepreneurial people, it could become a regional powerhouse. It could also provide the model for Islamic peoples to retain their culture while adapting to modernity and enjoying human liberty. But to fulfill that role Ankara must move away from its authoritarian past. Turkey may be more democratic "than any other Islamic country," observes Yayla, but that's not nearly enough. "We want freedom, peace, and the rule of law." □

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Concentrated Philosophies

by Dale Haywood

Some years ago, while visiting the University of Michigan in Ann Arbor, I saw a bumper sticker that got my attention. It was on the back bumper of an old Volkswagen Bug. It read: "PEOPLE, NOT PROFITS."

In one important respect, those words remind me of concentrated frozen orange juice. For these three simple words are also a concentrate. They are a concentrated philosophy—a *highly* concentrated philosophy.

In another important respect, the words are different from the orange juice. The frozen concentrate comes with instructions: "To serve: Mix with 3 cans cold water. Stir or shake briskly." There's little chance the user will make a mistake as he reconstitutes the juice.

The bumper sticker, however, didn't come with instructions. It's left to each of us to decide how to interpret it, how to reconstitute the few words into a more detailed message, and then to infer a philosophy. So there's a risk with the bumper sticker. Maybe we reconstitute the words the way the car owner intended. And maybe we don't.

What did the Volkswagen owner intend?

Each term in a philosophy-of-business course I teach, I ask my students what *they* think are the message and philosophy of this bumper sticker. Here are a few recent responses. They're fairly typical.

> *I think this message says we are putting too much emphasis on making a profit. People almost don't care any more who they hurt because they are so money-hungry and greedy. They feel as long as they are making money, that's all that matters.*

> *The message that the owner of the vehicle is trying to express is that companies need to focus on jobs and hiring people, not downsizing and cutting costs to increase profits.*

> *I think that the message being communicated by this bumper sticker is that corporations should not be so concerned about profits. This person feels that profits and money are corporations' main concerns and he feels that this is wrong.*

Generally, my students focus on current workers, those who assemble Buicks, take your pizza order over the phone at Domino's, and change your oil in 10 minutes or less at Pennzoil stores. This is logical. We often see these people in their roles as employees. We interact with them. It's clear *how* they serve us and *that* they serve us. I agree with my students. I, too, suspect that the "people" the Volkswagen owner had in mind are people who are currently employed.

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Further, my students speculate that the message intended in the "not profits" part is simply that profits should be sacrificed for the benefit of workers' pay. My students think this is simply a philosophy that advocates a particular redistribution of wealth. I think this is also a reasonable interpretation.

After giving them an opportunity to reconstitute the message and likely philosophy conveyed by "people, not profits," my students always want to know how *I* reconstitute the three words.

The first thing I do is point out that "people" are animate and "profits" are inanimate. That, in itself, introduces a subtle bias—against profits. (Of course the negative "not" serves explicitly to strengthen that bias.)

Workers are people with hearts and consciences. And children to feed. And mortgages. So readers of the bumper sticker, being people and animate themselves, are likely to readily empathize with current workers.

No Sympathy

But profits, being inanimate, don't have hearts and consciences. Neither do profits have children to feed or mortgages to pay. So it's much more difficult, maybe even impossible, for animate readers of bumper stickers to have sympathy for profits. For when it comes to generating sympathy, it's no contest between the animate and the inanimate. At least on the surface, it seems positively humane to give more to animate "people" and to sacrifice inanimate "profits."

But what if we dig a little deeper?

After calling their attention to that animate/inanimate distinction, I then explain to my students how, whenever I see the word profit, I picture a simple profit-and-loss statement. It looks like this:

Revenues
– Expenses
Taxable income
– Taxes
Profit

I proceed to tell them what comes to my mind when I reflect on each component of this statement. When I see the word "revenues," I think of people, namely, the corporation's customers, the people who buy Buicks and Domino's Pizzas, and who get their oil changed at Pennzoil stores.

When I see the word "expenses," I think of people. These are the people GM employs to assemble Buicks and Domino's employs to make pizzas, and the people who work in Pennzoil stores. My students and I surmise that these are the *only* people the bumper sticker refers to. They are important, but they are not the only people who come to my mind when I reflect on the word "expenses."

Others include the people who make the tires for the Buicks, the people in the dairy industry who make the cheese for Domino's pizzas, and the people employed in the refineries that make the oil for the Pennzoil stores.

These others also include the creditors of all of those businesses: the people who have worked, saved, and lent their savings (probably through financial intermediaries such as banks) to the businesses to help finance the equipment that their workers use—robots, ovens, hydraulic pumps. To these creditors, corporations pay interest. Interest is an expense.

When we get to the bottom line of the income statement, "profit," yet another group of people comes to my mind: stockholders. They own the corporations. They don't show up for work, yet they perform a vital role. They, along with the creditors, finance the plant and equipment that the workers use. Those tools multiply what the workers can accomplish with brains and brawn alone.

Some of these stockholders might be currently working. Others might not be. But most of them became stockholders by working at some time in their lives. It's likely that many of them had to work harder than current workers, because they had less-advanced tools at their disposal. They made sacrifices. They didn't spend everything they earned. They chose to buy stock with some of their savings. Profits compensate them for their vital role.

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Profits Represent People Too

So, with just a little probing, we find that *profits are fundamentally animate too*! Reasoning this way, we eliminate the bias against profits that I had alerted my students to. Just as corporations pay wages and salaries to workers for their current contributions to the business, corporations "pay" profits to stockholders (in the form of cash dividends or retained earnings that may fuel capital gains) for *their* contributions to the business. These two groups of people simply make different contributions, the former more direct, the latter less direct.

To me, then, the bumper sticker really reads "people, not people" or "wages, not profits." Either way, the implied philosophy is clearer. We can now be even more confident that the owner of the Volkswagen was advocating a different—and what he probably considered a more just—allocation of revenue, namely, more for workers and less for stockholders.

Would that redistribution be wise or more just? Attracting revenues in business is a challenge. Just ask anyone still employed in the U.S. airline industry, or the people no longer working at Kmart. We don't have to look hard to find dramatic, or undramatic, examples.

At one time, buyers wanted shag carpets. Now they want berber. At least in our neighborhood, the floor covering of choice for kitchens is currently hardwood. Not too long ago, it was ceramic tile. I remember when there were no "light" salad dressings. But judging from what you'll find in our refrigerator door at this moment, you might wonder if there is currently any other kind. Buyers are fickle. It's tough for sellers accurately to anticipate what buyers want.

Then, as if consistently anticipating what buyers want weren't challenge enough, there's a second big challenge: pricing. This is a challenge because sellers like higher prices and buyers like lower prices.

Once business owners and managers have revenues in hand, they face still other challenges. Employees and suppliers want a higher percentage of those revenues, but that would leave a lower percentage for the stockholders, who also want a higher percentage. But that would leave a lower percent for the employees and suppliers. However, as we have seen, customers, employees, suppliers, and shareholders are *all* people. They are *all* important to a viable business.

The men and women in business who set prices and who control the disposition of revenues must perform an extraordinary balancing act. They must simultaneously and harmoniously balance the interests of all of these people for the benefit of all of them over the long run. I think the message on a bumper sticker that reads "people, not profits" and the philosophy it implies are destabilizing and counterproductive. They fuel an adversarial relationship between two vital groups of people. They foster an "us" (workers) versus "them" (stockholders) mentality. This is not useful. It is positively harmful.

In concluding my response to my students, I recommend an alternative, a bumper sticker that reads "PEOPLE AND PROFITS." For, in a highly concentrated form, I believe my three words communicate a much sounder message and philosophy. My bumper sticker would contribute to a clearer understanding of profits and stockholders and to a more complete and accurate understanding of the philosophy of private enterprise. I think my bumper sticker would be helpful.

My students think so too. □

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FEE TODAY

www.FEE.org November 2002

Give Thanks for Freedom

by Bettina Bien Greaves

Editor's Note: This month we share a classic Thanksgiving message, written by Bettina Bien Greaves in 1987.

The Pilgrims are usually credited with having celebrated the first Thanksgiving in this hemisphere. And rightly so. However, the custom of giving thanks became nationwide only much later.

Our first President, George Washington, was grateful for the Constitution. In his view, it offered an opportunity for the new nation to start afresh. On October 3, 1789, he proclaimed one day nationwide, Thursday, November 26, for "acknowledging with grateful hearts the many and signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness." In Washington's view the new Constitution limited the power of government, leaving the people free "to perform our several and relative duties properly and punctually." He gave special thanks also "for the civil and religious liberty with which we are blessed."

Ever since Civil War time, beginning with Abraham Lincoln, our Presidents have issued a similar Proclamation each year, setting aside one special day for giving thanks. Thanksgiving Day has become a national holiday, celebrated by some in prayer, by some in sports and parades, and by others with feasts.

We in this country today enjoy economic prosperity on a scale unequaled in any other time or clime. We pride ourselves on our "American way of life." We truly have a great deal to be thankful for. However, as we count our blessings this November, let us give some thought and thanks to the freedom on which these many blessings rest.

It is commonplace to say that the colonies were settled, the West explored, the nation developed, and the country populated by individualists who wanted to be independent. The tired, the poor, the huddled masses who yearned to be free came to our shores. They sought the opportunity to speak, to write, to work, to worship, and to live where and as they chose.

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The Statue of Liberty now symbolizes their desire to escape oppressive government and to seek opportunity in this land of the free.

We still pay lip service to freedom. But many have forgotten our ancestors' fear of oppressive government. Many have come to rely on some government privilege or protection. We no longer understand how much piecemeal interventions, regulations, and controls can gradually erode our independence. We no longer realize what a big debt we owe to freedom and to the freedom of others.

Practically everything we have today has stemmed from the ideas, initiative, and efforts of free men and women, working and producing together. The food, clothing, shelter, and luxuries we now enjoy represent the output of men and women working, planning, and producing in voluntary cooperation with one another. Countless individuals have labored without being coaxed or coerced by government to till the soil, cultivate the fruits and vegetables, harvest the grains, herd the sheep and cattle, build the skyscrapers, erect the churches and synagogues, build the factories, manufacture the automobiles, trains, planes and buses, weave the textiles, invent the radio, moving pictures, television, computers, appliances, and other conveniences, produce the medicines, build the hospitals, write the books and stories, print the newspapers, compose the music, produce the plays and films, and so on, that all of us now use and enjoy. We are apt to forget that this entire process of voluntary social cooperation could disintegrate if government obstructions are permitted to expand and to proliferate.

Countless individuals, each with his or her own particular aptitudes, talents, and interests, have contributed to the good life we now enjoy. In giving thanks this year, therefore, let's count our blessings. But let's do more than that. Let's not forget the debt we owe to free men and women everywhere, whose ideas, initiative, innovativeness, energy, and efforts contribute to our well-being. In all humility, therefore, let's give thanks also to the freedom that makes our blessings possible. □

Bettina Bien Greaves was a longtime member of the staff of the Foundation for Economic Education. She is best known for her work as editor, translator, and interpreter of the ideas of Ludwig von Mises. Bettina, who now resides in North Carolina, is a member of FEE's Board of Trustees.

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Meet the Interns

Since its founding in the 1940s the Foundation for Economic Education has influenced hundreds of thousands of students, teachers, and business people worldwide.

FEE continues to promote free-market ideas internationally with its monthly magazine, *Ideas on Liberty*; its website (www.fee.org); and by inviting students from around the world to attend week-long seminars at its headquarters in Irvington, New York. Among the 170 students attending FEE's five week-long summer seminars in 2002 were students from Argentina, Brazil, Canada, Guatemala, Uruguay, Austria, Bulgaria, Germany, Hungary, Poland, Switzerland, Russia, China, Hong Kong, Gambia, Kenya, and other countries.

Articles from *Ideas on Liberty* on development economics and misguided economic interventions in countries around the world can be found on www.fee.org in the *Ideas on Liberty* section (just search for countries or regions). Additional articles are posted at www.freespeaker.org/international.

This fall we are fortunate to have three international interns.

June Arunga, FEE's intern for Africa, is a law student at University of Nairobi, Kenya. June is currently developing economic education programs for students and teachers in Kenya based on our programs. In addition she is a contributing editor to the Africa section of the freespeaker.org website (www.freespeaker.org/Africa). June has experience with a wide range of African and youth development programs. One of her goals is to promote to the African Youth Parliament (to which she is a representative) a better understanding of market ideas and the need for clear property rights and enforceable contracts in order to promote economic growth in developing countries.

Carolina Feuillant is FEE's intern for Latin America. Carolina is a graduate of the University of Buenos Aires. She is developing economic education programs for teachers and students in Argentina and hopes to revive a FEE discussion club there as well as develop a FEE alumni association for Argentina. More than 200 Argentine students have attended FEE seminars since the 1950s and many play active roles in Argentine free-market groups.

Tural Valiyev of Azerbaijan is our third intern. After finishing high school in Baku, Azerbaijan, he was granted a

Tural Valiyev, Carolina Feuillant, and June Arunga, FEE's Fall 2002 Interns.

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scholarship to study international relations in northern Cyprus. He has interned at the Turkish Embassy in Azerbaijan, worked for a variety of student organizations, and participated at seminars and conferences all over the world. Tural is providing assistance with database operations and our publications. "My deep passion for liberty prompted me to apply for a FEE internship," he said, adding that he expects to gain a deeper understanding of the freedom philosophy while here.

June, Carolina, and Tural are participating in FEE homeschool debate workshops this fall, giving presentations on the economics of trade and U.S. trade policy with Africa and/or the Middle East (this year's national homeschool debate topic). For more information see: www.freespeaker.org/homeschool.

Autumn Lecture Series Underway

On September 20 we welcomed 40 guests to the first of our autumn lectures at FEE.

Stefan Spath introduced interns Carolina Feuillant and June Arunga, who spoke briefly about the importance of FEE's international outreach (see related story on page 3).

Professor Sanford (Sandy) Ikeda was the primary speaker for the evening. Sandy is Associate Professor of Economics, Purchase College (State University of New York) and a visiting scholar and research fellow at New York University. He studied with professor Hans Sennholz at Grove City College (and attended a FEE undergraduate seminar when he was a senior) and earned a Ph.D. at New York University.

Sandy's topic was the "lousy economics" of *A Beautiful Mind*, Ron Howard's much-honored film about Nobel laureate John Forbes Nash, Jr. Sandy had reviewed the movie for us in print (see the August 2002 issue of *Ideas on Liberty*), but the lecture at FEE allowed him to explore some finer points of economic theory. The audience also had the advantage of viewing a clip from the film. At the end of the evening, those present knew that Nash's theories had NOT overthrown Adam Smith and 150 (or 175) years of economics.

Karin Krupinsky, director of member relations, is coordinator for the lecture series. Please contact her for information about forthcoming lectures: 800-960-4FEE, ext. 214.

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IDEAS ON LIBERTY
NOVEMBER 2002

Dworkin's Unbounded Legalism

by Norman Barry

For a number of reasons, libertarians should be interested in the legal philosophy of Ronald Dworkin.[1] Of course, he is a leftist who seeks to implement the American "liberal" agenda through judicial activity. But it is not often realized that the legal doctrine that underlies this is not much different from classical liberalism. He believes in rights as the pre-eminent doctrine that should constrain all political action. These are individual rights, not group rights (though he is not entirely consistent on this), and he is normally anxious to protect these against the claims of the communitarians.

Dworkin's faith in legal processes has brought scorn from Critical Legal Studies writers whose juvenile Marxism drives them to condemn Western law as a subtle mechanism by which the bourgeois property owners oppress the benighted proletariat. His defense of an almost unlimited free speech has drawn the ire of the feminists who say that the open display of sexuality is equivalent to physical offenses against women.[2] Most important is his use of the law and the Constitution to counter that majoritarianism which is sometimes a refuge for American conservatives.

However, there are great differences between Dworkin and classical liberals. These relate to his activist social agenda, to be pursued by the courts; his overt disrespect for economic rights; and his refusal to use the law to protect private property. But many of the similarities and differences between Dworkin and classical liberalism go back to fundamental jurisprudence.

At the theoretical level, there is some similarity between Dworkin and F. A. Hayek on the meaning of law and its role in a free society.[3] Both oppose legal positivism and propound the *autonomy* of law. That is, they believe that legal processes have a validity independent of, and untainted by, politics.

Legal positivism separates law from morality, and the meaning of law is independent of any ethical purposes a purported legal rule might have. Its validity depends exclusively on the objective procedures that validate it. Under classical English jurisprudence, genuine law was a product of an all-powerful sovereign, that is, any institution that can secure obedience. In its most sophisticated form, however, in the jurisprudence of H.L.A. Hart, valid law is distinguished by its pedigree: did it emanate from an authoritative set of rules accepted by a community?[4] The final source of authority is the "rule of recognition." Thus a legal order that does not have a sovereign, such as America's, could still be incorporated into the model of rules, again with no reference to morality. The rule(s) of recognition here comprises the Constitution and appropriate Supreme Court decisions.

Contributing editor Norman Barry (Norman.barry @buckingham.ac.uk) is professor of social and political theory at the University of Buckingham in the U.K. He is author of An Introduction to Modern Political Theory *(St. Martin's Press).*

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However, Dworkin makes a distinction between rules and principles. Principles, unlike rules, do not apply all the time, but are called on by judges to settle hard cases. They are not expressed formally, but are immanent in the morality of a community. Nevertheless, they are intrinsically a part of its law. To a positivist like Hart, when the rules run out or are indecisive, judges have to innovate and invent new rules. Of course, there is a danger of retroactive legislation here, and positivists recommend that judges implement what they anticipate the legislature's likely response to a particular conundrum will be, or make their decisions consistent with current values. But, nevertheless, such an invented rule is not strictly speaking law until it has been incorporated into the system by statute or case law. In other words, judges have strong discretion.

For Dworkin, this is not a feature of judicial activity, which is always constrained by precedent, by the necessity to interpret principles correctly, and by the need to make decisions "fit" the prevailing legal structure. As he says, "I insist that the process, even in hard cases, can sensibly be said to be aimed at discovering, rather than inventing, the rights of the persons concerned."[5] Hayek could not have put it better himself.

Allied to this is Dworkin's important distinction between principles and policy. Legal principles are primarily individual rights, which the judiciary interprets, while policies have a collective purpose that the legislature promotes. Outside of rights, legislatures are pretty much unlimited in Dworkin's world, though not in Hayek's, where economic freedom and property rights are part of the protected domain of principle.

Principles and Adjudication

Dworkin's jurisprudence is mainly about adjudication, especially in common-law systems, which assign a significant role for judges. He thinks there is always a right answer to a legal case and it is the duty of judges to find it. They draw on principles to settle hard cases. In an early New York state case (*Riggs v. Palmer*, 1889), about a murderer's claim to inherit from his victim, all the formal rules seem to imply that he should, outrageous though that would have been. But the court invoked the principle that "no man should profit from his own wrongs" and denied the inheritance. This was never stated as a formal rule, and it was conceded that it need not always apply.

COURTESY NYU

Ronald Dworkin

This looks like an uncontroversial use of principles, but Dworkin uses the argument to claim that a number of highly disputatious cases in American law may be settled by principle, even if the reading of the law in terms of rules might well preclude this. It is here that Dworkin's principle of equality, or the "right to equal concern and respect," has been used implicitly by the courts to implement the "liberal" agenda. Indeed, in the cases about which Dworkin has been so eloquent, it is implausible to imagine that the judiciary has merely declared law. Still, it is much easier for Dworkinian jurisprudence to flourish in the United States because the Constitution is loosely worded in parts and the Supreme Court has extensive review powers.

The right to equal concern and respect has been implicitly used to validate a whole string of cases about affirmative action. It is true that equality is explicitly recognized in the Constitution and in the Civil Rights Act (1964). Classical liberalism, of course, recognizes equality, but it does not validate affirmative action, busing, excessive rights for criminal suspects, and the rest of the litany of American "liberalism." American law is supposed to have precluded jobs being allocated, or university admissions decided, by quotas based on race, yet that has effectively happened anyway. Ironically, white males, who are the victims of affirmative action, have started to use both the Constitution and the Civil Rights Act in litigation.

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Despite the superficial similarity between classical liberals and Dworkin in terms of pure jurisprudence and their mutual respect for the common law, they really are worlds apart.

From a libertarian perspective, the question is, why is there antidiscrimination law anyway? It is well known in economic theory that the real losers are those who would arbitrarily deprive qualified people of jobs. The market is a self-correcting device. There is a case for nondiscrimination, though not affirmative action and quotas, in public-sector employment precisely because competitive processes are less a feature of the labor market there.

Dworkin is by no means opposed to the market, but argues that it cannot be relied on to protect (his conception of) rights. To Dworkin's regret, there has been some progress in the elimination of affirmative action in the public sector. In *Richmond v. J. A. Croson* (1989), the Supreme Court forbade contracts that explicitly favored minority groups, and although there have been some setbacks, the problem is now less severe. Ironically, and contra Dworkin's market skepticism, most affirmative action probably occurs in the private sector. Libertarians are naturally in favor of individual rights, not group claims, and it is the latter that Dworkin seems to support, despite the alleged individualism of his jurisprudence, in his defense of affirmative action. But if there were no antidiscrimination laws, a benign approach could flourish and there would be few potentially controversial cases.

Economic Liberty

Dworkin's objection to constitutional protection for economic liberty illustrates his differences from classical liberalism. He does not believe in a general right to liberty, from which economic liberty is derived, because he mistakenly associates it with license. Since license is unsustainable, there have to be laws that can be evaluated through particular examples. He does not believe that economic regulation violates the right to equal concern and respect, therefore any appraisal of regulation must be conducted entirely on utilitarian grounds. Of course, he can never find reasons for opposing minimum-wage laws, the taking of property, or the regulation of trade. He does not allow the Supreme Court to apply any rational test for the constitutionality of these laws.

The argument goes back to the famous case of *Lochner v. New York* (1905), in which the Court struck down a New York statute that would have limited the hours per week bakers could work. It is claimed that the unlimited right to contract was invented by an activist Court through an adventurous reading of the Fourteenth Amendment, but, regrettably, since *Lochner* was overturned, the government has had an almost completely free hand in economic regulation. *That* government power is not in the Constitution or the American legal tradition. In *United States v. Carolene Products Co.* (1938), a clear but erroneous distinction was drawn between civil and economic liberty and the Court said it would protect the former but not the latter.

The important point about cases like *Lochner* is jurisprudential, not economic, though there is much to be said for the view that restrictions on labor contracts are detrimental to efficiency and for the historical argument that the New York statute was passed at the behest of established bakers fearing competition from immigrants. *Lochner* involved the Court in "substantive due process," extending the exact wording of the Constitution. But "liberals" condemn the case (Dworkin refers to the "stench" of *Lochner*), while admiring other cases that

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also use "substantive due process" (such as *Roe v. Wade* [1973]).

Despite the superficial similarity between classical liberals and Dworkin in terms of pure jurisprudence and their mutual respect for the common law, they really are worlds apart. The former see a modest role for the judiciary. It should act only to preserve an ongoing, spontaneous system. For Dworkin, the courts should bring about a preconceived end-state, one defined in terms of equality.

Furthermore, classical liberalism has a much broader conception of liberty under law; it should protect property and advance free economic competition, as well as the familiar civil liberties. In this context the right to contract is as legitimate an inference from traditional law and constitutionalism as the right to free speech.

But Dworkin abandons principle and just picks and chooses the particular freedoms he personally favors: he promotes a highly contentious social agenda under the guise of law. The now-dominant role that judges have should make libertarians reconsider the much-heralded virtues of the common law. And there is something to be said for positivism: when societies are divided, the integrity of law is better preserved if morality is kept out—and the state as well. □

1. Dworkin is a prolific writer. His major works are *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978); *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1985); *Law's Empire* (London: Fontana, 1986); and *Freedom's Law* (Cambridge, Mass.: Harvard University Press, 1996). His overt egalitarianism is found in *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000).

2. See "MacKinnon's Words," in Dworkin, *Freedom's Law*, pp. 227–43.

3. See F.A. Hayek, *Law, Legislation, and Liberty*, vol. 1, *Rules and Order* (London: Routledge and Kegan Paul, 1976).

4. H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).

5. Dworkin, *Taking Rights Seriously*, p. 280.

OOPS! We Can't Find the Government!

Princess Navina has spent her young life studying the governments of other lands, but in Voluntaria she draws a blank. Reacting against their history of past violence, the people of Voluntaria have sworn off using force to manage society. As a result, they have none of the political fixtures of the modern world: no taxation, no regulation, no laws... and no lawyers!

How do they solve the problems of daily life without depending on politicians? The solution is so simple one wonders why no one has thought of it before.

Political scientist Jim Payne, the creator of the Princess Navina series, has written fourteen books on topics ranging from the Peruvian labor movement to the U. S. Congress. "After 41 years of research," he says, "I think I've figured out what's wrong with government and what we can do about it. I've put the answer in fictional form to engage youthful minds without distressing elderly ones."

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IDEAS ON LIBERTY
NOVEMBER 2002

Mental Illness: From Shame to Pride

In the nineteenth century people were ashamed and embarrassed by their mentally ill relatives. This was especially true for parents who had a mentally ill child and for adult children who had a parent incarcerated in an insane asylum. Today, such persons take pride in having a mentally ill "loved one," make a career of speaking and writing about his "illness," and fight for his "right to treatment."

The attitude of journalists, writers, and social commentators toward psychiatry underwent an analogous transformation. In the nineteenth century they were critical of psychiatrists who locked up innocent people in insane asylums and excused criminals as mentally ill. Now they view and admire them as scientifically enlightened, caring doctors.

How and why did this change come about? One impetus for this transformation—which psychiatrists call the "remedicalization of psychiatry"—was the publication, in 1961, of my book *The Myth of Mental Illness* and Erving Goffman's book *Asylums*. Another was the fleeting interest of a few lawyers, stimulated by these books, in freeing mental patients from their psychiatric life sentences. (Sadly, these "civil rights" zealots were more interested in promoting themselves than in protecting liberty and responsibility, and showed no interest in opposing the insanity defense.)

These assaults on psychiatry as a medical specialty and on involuntary mental hospitalization as a species of preventive detention made psychiatrists close ranks and launch a well-organized and highly effective counteroffensive. The psychiatric defense of mental illness as brain disease and of psychiatric deprivation of liberty as medical treatment comprised several mutually reinforcing measures. One was the creation of a group of chemicals dubbed "antipsychotics," a term intended to resonate with the term "antibiotics." These chemical straitjackets were successfully sold to the public and the press—though not to involuntary patients—as "miracle drugs."

The psychiatrists' second line of defense was equally inspired. State mental hospitals had acquired a bad name. Keeping persons "hospitalized" for years and decades did not conform to the image of how real doctors use hospitals. With wages rising sharply after the 1950s, the cost of such prolonged hospitalization was also becoming burdensome to the states. The solution was to "discharge" the hundreds of thousands of chronic mental patients, attribute their forcible expulsion to the therapeutic effectiveness of "psychiatric miracle drugs," and call the eviction "deinstitutionalization." The enterprise was a fraud from beginning to end. But it looked like the "right thing to do," just as formerly the chronic hospitalization of mental patients looked that way.

Still another important element of remedicalization consisted of sanitizing the psychi-

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atric vocabulary. The classic diagnoses of hysteria, neurosis, and homosexuality were declared to be nondiseases and were quickly forgotten. So-called "severe" mental diseases were authoritatively declared to be "brain diseases," a claim supported by the invention of a new neurochemistry (in fact, a neuromythology) and the popularization of the view that such illnesses are due to "chemical imbalances in the brain."

Significant as these developments were, perhaps the single most important impetus for the change I am describing was the formation of a new social organization and political lobby, the National Alliance for the Mentally Ill, or NAMI.

NAMI

The NAMI website describes the organization as follows: "NAMI is dedicated to the eradication of mental illnesses and to the improvement of the quality of life of all whose lives are affected by these diseases. . . . Founded in 1979, NAMI has more than 210,000 members who seek equitable services for people with severe mental illnesses, which are known to be physical brain disorders."

The NAMI rhetoric conceals that the organization is composed of, and controlled by, principally the relatives of so-called mentally ill persons and that its main purpose is to justify depriving such persons of liberty in the name of mental health. So convinced is NAMI of the nobility of its cause that its website once offered this scenario:

> Sometime, during the course of your loved one's illness, you may need the police. By preparing now, before you need help, you can make the day you need help go much more smoothly. . . . It is often difficult to get 911 to respond to your calls if you need someone to come & take your MI relation to a hospital emergency room (ER). They may not believe that you really need help. And if they do send the police, the police are often reluctant to take someone for involuntary commitment. That is because cops are concerned about liability. . . . When calling 911, the best way to get quick action is to say, "Violent EDP," or "Suicidal EDP." EDP stands for Emotionally Disturbed Person. This shows the operator that you know what you're talking about. Describe the danger very specifically. "He's a danger to himself" is not as good as "This morning my son said he was going to jump off the roof." . . . Also, give past history of violence. *This is especially important if the person is not acting up.* . . . When the police come, they need compelling evidence that the person is a danger to self or others before they can involuntarily take him or her to the ER for evaluation. . . . Realize that you & the cops are at cross purposes. You want them to take someone to the hospital. They don't want to do it. . . . Say, "Officer, I understand your reluctance. Let me spell out for you the problems & the danger." . . . *While AMI / FAMI is not suggesting you do this, the fact is that some families have learned to "turn over the furniture" before calling the police.* Many police require individuals with neurobiological disorders to be imminently dangerous before treating the person against their will. If the police see furniture disturbed they will usually conclude that the person is imminently dangerous.

(This material is no longer posted at the national NAMI site. But it can be found linked from the Athens, Ohio, NAMI site at www.seorf.ohiou.edu/~xx091/911calls.html.)

Giving false information to the police is a felony. Except, it seems, when the falsehood serves the avowed aim of providing mental health treatment for a "loved one."

Am I tilting at windmills? How important is involuntary mental hospitalization in our age of deinstitutionalization, when mental illnesses are said to be brain diseases like Parkinsonism, and forced psychiatric confinement is considered an anachronism? The authoritative text, *Mental Health and Law: Research, Policy, and Services*, edited by Bruce D. Sales and Saleem A. Shah, published in 1996, states: "Each year in the United States well over one million persons are civilly committed to hospitals for psychiatric treatment."

Quod erat demonstrandum. □

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IDEAS ON LIBERTY
NOVEMBER 2002

Does Court Time-Saving Cost Liberty?

by Richard W. Fulmer

The ability of ordinary American citizens to appeal unjust and arbitrary government decisions is being steadily eroded by the federal court system. In the name of efficiency and cost-saving, courts have been discarding time-proven practices such as hearing oral arguments and writing, presenting, and publishing reasoned opinions. These practices, which open the proceedings of the judicial process to reasonable and necessary public oversight, are being curtailed.

Originally, the only federal courts of appeal in the United States were the Supreme Court and "circuit" courts staffed by federal district-court judges and Supreme Court justices "riding circuit." The physical hardship of traveling to these district courts caused the practice of circuit riding to all but cease by the 1840s.[1] This left the Supreme Court as the only federal court of appeal until the Judiciary Act of 1869 established nine circuit courts having the same powers and jurisdiction as the Supreme Court justices had when they were riding circuit. (Article III, Section 1, of the U.S. Constitution vests judicial power "in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.")

Court workloads increased with growing federal power, and circuit-court judges quickly found that they had less and less time to spend on appeals. Again, appellate duties shifted back to the Supreme Court. The number of cases requiring Court review rose steadily from 310 in 1860 to 1,816 in 1890.[2] This heavy and growing burden was eased by the Judiciary Act of 1891, which abolished the appellate powers of the circuit courts entirely and transferred them to nine new appellate courts. These new Circuit Courts of Appeal (renamed Courts of Appeal in 1948) were each staffed by three judges tasked with reviewing cases to correct any errors made at the district-court level. Since 1891, the number of regional Courts of Appeal has increased to 12 (11 covering at least three states each and one for the District of Columbia), and the number of judges to 167.

Until the early 1970s, oral arguments were heard from the litigants in virtually all cases. After hearing the arguments, the judges on the panel discussed each case in order to learn and consider one another's views. Following a thorough discussion, one or more of the judges, with the help of law clerks, prepared a written opinion. *Black's Law Dictionary* (6th ed., 1990) defines the term "opinion" as a "statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based."

The draft of the opinion was then circulated among the panel members and revised

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in response to their comments. In case of disagreement between the judges, a dissenting opinion might also be produced.

The final copy of the opinion was presented in court and then published. These published opinions became part of the nation's body of law and served as precedent in subsequent cases. If a decision were appealed, the Supreme Court would review the arguments presented to determine whether the lower court's ruling was correct.

Federal power continued to increase throughout the twentieth century because of legislation generated by or during the Progressive Era, the New Deal, the war on poverty, civil-rights issues, environmental regulation, and the war on drugs. As a result, appellate-court caseloads exploded once again. (In 1970 the courts of appeals disposed of over 10,000 cases. By 1997 the number exceeded 51,000). Moreover, the nature of the courts' work changed from dealing primarily with disputes between citizens to dealing with disputes between citizens and federal regulatory agencies. In effect, the court system became the regulator of the regulators.[3]

Despite the huge increase in workload, Congress chose not to expand the appellate-court system as it had done in the past. Instead, starting in the early 1970s the courts "judicially legislated" a reduction of their own workload by taking a series of shortcuts. First oral arguments were limited and are now the exception rather than the rule. By 1992, they were heard in only about 45 percent of all cases. Even then some courts routinely gave each side only 15 minutes to present its case.[4]

An Essential Loss

Yet argumentation is essential to the formulation of good judicial decisions. As law professors William M. Richman and William L. Reynolds write, "Oral argument brings the judges together and involves them in the case both mentally and physically—a process which helps the quality of decision making. Argument permits judges to ask questions that the briefs do not answer and to explore alternative theories that the parties have not developed."[5]

Because of the limits placed on argumentation, judges rely more and more on the briefs presented by the litigants and on summaries of those briefs written by law clerks. This places litigants with limited resources—and therefore with a limited ability to produce quality briefs—at an even greater disadvantage than before. The federal government is a frequent litigant and has extremely deep pockets. Not surprisingly, therefore, in cases in which the appellant is a private citizen and the appellee the U.S. government, the citizen is more likely to win when oral arguments are heard than when they are not.[6] Unfortunately, oral arguments are far more likely to be allowed in high-visibility cases, such as antitrust suits, than in cases involving individual citizens.

Another efficiency measure taken was the elimination of the requirement that judges publish their opinions.[7] In 1964 the Judicial Conference of the United States, which administers the lower federal courts, recommended that judges publish only those opinions "which are of general precedential value."[8] Ten years later, the Federal Judicial Center published a model rule for limiting publication for use by the appeals courts, stipulating that unpublished opinions were not to be used as precedent.[9] These new guidelines allow the courts' opinions to be shorter and written with less care than before. By 1979, two-thirds of all appellate-court opinions were unpublished.

The ramifications of this change are many and far-reaching. Our nation's legal system is guided by the principle of *stare decisis* (literally, "let the decision stand"). This doctrine holds that judges are to be guided by precedent and should look to the past for instruction in reaching a decision.[10] Some jurists argue that all rulings should be considered precedent and be respected by the judges. Past similar cases may provide nuances of value to lawyers and judges in future cases. Even in the unlikely event that a new case is identical on every point of law to a previous case, there is value in being able to refer to it. Citing ten precedents will

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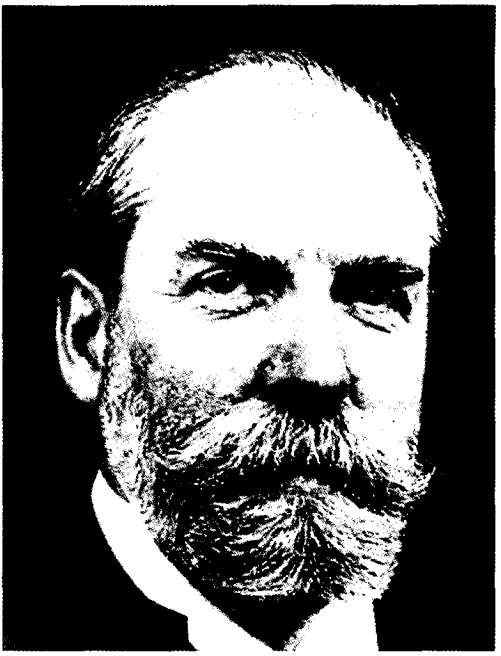
clearly carry more weight in a courtroom or in a brief than a reference to only one or two.

Though unpublished opinions may not be cited as precedent, litigants with deep pockets have the wherewithal to research them for arguments that may be used (without citation) in court. The frequency with which this occurs should suggest that the courts are not always the best judges as to whether their cases will be useful as precedent. Another practical impact of this shortcut is that the Supreme Court is far less likely to review a judgment if the opinion was unpublished. The high court hears only those cases in which important questions of law are at stake, and the fact that a lower court ordered a particular opinion not to be published indicates that the case is of no "precedential value." This may help lower courts to avoid scrutiny and reduce deterrents to corruption.

Another issue is accountability. Judges sign the published opinions they write, while an unpublished opinion is typically issued *Per Curiam* ("by the court"). The realization that their opinions carry their names and will be reviewed not only by the litigants, but also by the public, the media, and other courts, may lead judges to more carefully consider both the facts and the law associated with each ruling. In the course of putting their thoughts down on paper, it is not uncommon for judges to change their minds about a case. As one jurist put it, the act of writing is a "remarkably effective device for detecting fissures in accuracy and logic. . . . Somehow, a decision mulled over in one's head or talked about in conference looks different when dressed up in written words and sent out into the sunlight. . . . [W]e may be in the very middle of an opinion, struggling to reflect the reasoning all judges have agreed on, only to realize that it simply 'won't write.' The act of writing tells us what was wrong with the act of thinking."[11]

In 1928, Chief Justice Charles Evans Hughes stated, "[T]here is no better precaution against judicial mistakes than . . . setting out accurately and adequately the material facts as well as the points to be decided."[12]



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Charles Evans Hughes (1862–1948)

Unpublished Order

Perhaps the ultimate time-saving device is the unpublished order (also called an "unpublished non-opinion" or a "summary affirmance"), in which the court simply finds for (or against) the lower court's ruling without any explanation. Conduct more destructive to the system of justice in America can scarcely be imagined. The practice of writing and presenting reasoned opinions results not only in better judicial decisions, it also provides both litigants and the public with a sense that the issues in a case have been thoughtfully reviewed, due process observed, and justice rendered. This sense of justice done is essential in a country founded on the principle that government rules by the consent of the governed. Courts must not only rule with justice, they must also be *seen* to rule with justice.

The irony is that, in the long run, these "time-saving" schemes probably result in far more work for the appellate courts. Litigants, angry and confused because they have no idea why they lost, are likely to make follow-on appeals. Lower courts, denied the foundation and guidance that published

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opinions would have provided, are more apt to issue rulings that will be appealed. Yet in many cases an opinion need be no more than the statement, "Affirmed by the reasoning applied in the case of *Smith v. Jones*."

Courts have power over people's lives. With the stroke of a pen, they can destroy whole companies. A ruling can strip away people's life savings and all their future earnings—sentencing them to lives of virtual slavery. Judges can deprive an individual of his or her freedom and even of life itself. When courts exercise such awesome power, when they take away life, liberty, the ability to send a child to college, or the hope of a dignified retirement, human decency demands that they at least say why. □

1. Rayman L. Solomon, "Circuit Courts of Appeals," in Kermit L. Hall, ed., *The Oxford Companion to the Supreme Court of the United States* (New York: Oxford University Press, 1992), p. 145.

2. John E. Semonche, "Judiciary Act of 1891," in Hall, p. 476.

3. Rayman L. Solomon, "Courts of Appeals," in Hall, p. 205.

4. William M. Richman and William L. Reynolds, "Elitism, Expediency, and the New Certiorari: Requiem for the Learned Hand Tradition," *Cornell Law Review*, January 1996, www.nonpublication.com/richman.htm. See also http://app.comm.uscourts.gov/hearings/chicago/richman.htm

5. Ibid.

6. Ibid.

7. The fact that opinions are "unpublished" means that they are not printed in a book; it does not mean that they are unavailable to the public. Copies of such rulings can generally be requested from the court clerk, and today, most "unpublished" opinions are available on the Internet.

8. Administrative Office of the United States Courts, Judicial Conference Reports 1962–64, 1964, p. 11.

9. Written opinions, published or otherwise, are not required by the Constitution, and fall within the discretion of the courts.

10. The purpose of this principle is not to inhibit progress, but rather to establish and protect the "rule of law," which requires that laws be certain and known in advance. By "discovering" new meaning in a law, a judge is, in effect, writing new law. Such rulings could easily subject defendants to an *ex post facto* law, which makes an act a criminal offense even though the act was not a crime when it was done. In theory, *ex post facto* laws are forbidden by Article I, sections 9 and 10, of the U.S. Constitution.

11. Frank M. Coffin; *The Ways of a Judge: Reflections From the Federal Appellate Bench* (Boston: Houghton Mifflin, 1980), p. 57.

12. Bryan A. Garner, "Style of Opinions," in Hall, p. 608.

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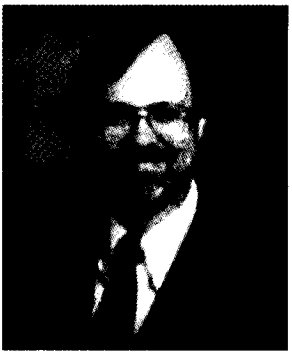

Franklin Roosevelt and the Greatest Economic Myth of the Twentieth Century

Textbooks galore point out that President Franklin Roosevelt left a permanent stamp on the American economy. But no textbook in print explains how Roosevelt promoted what is probably the greatest economic myth of the twentieth century: the view that capitalism caused the Great Depression.

During the 1932 campaign against Herbert Hoover, Roosevelt repeated in speech after speech his view that free markets had failed America. During that election year, the U.S. economy was in tatters: 25 percent unemployment, a plummeting stock market, and rampant pessimism sapped American morale. To audiences all over the nation, Roosevelt expounded his theory of why capitalism had failed.

The boom of the 1920s had created a maldistribution of wealth, Roosevelt alleged. The rich were getting richer and the poor poorer. "Corporate profit resulting from this period was enormous," Roosevelt argued, but "very little of it went into increased wages; the worker was forgotten."[1]

In fact, the poor were getting so poor they could no longer consume enough to support a robust economy, and so naturally it collapsed into depression. The solution, Roosevelt pledged, was New Deal programs for the purpose "of meeting the problem of underconsumption, of adjusting production to consumption, of distributing wealth and products more equitably."[2] Economists called Roosevelt's diagnosis the "underconsumption" thesis.

During the campaign Roosevelt often flayed the capitalists, whose power had "become so disproportionate as to dry up purchasing power within any other group. . . . It is a proper concern of the Government to use wise measures of regulation which will bring this purchasing power back to normal."[3] In another speech, he said that "if the process of concentration goes on at the same rate, at the end of another century we shall have all American industry controlled by a dozen corporations, and run by perhaps a hundred men. Put plainly, we are steering a steady course toward economic oligarchy, if we are not there already."[4]

The underconsumption thesis was not original with Roosevelt, but he acted on it and did more to popularize it than anyone else. But is it valid? Does the evidence support the view that (1) wealth was becoming increasingly concentrated during the 1920s, and (2) that industrial workers were not able to consume adequately because they were receiving a steadily smaller share of corporate earnings during the 1920s?

The economic statistics collected during the 1920s and 1930s give little support to Roosevelt's ideas. In 1921 the percentage of national income received by the top 5 percent of the population was 25.5. That share remained stable throughout the decade, and by 1929 the top 5 percent received 26.09 percent of the national income.[5] Does that

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microscopic increase really suggest, as Roosevelt charged, that we were "steering a steady course toward economic oligarchy, if we are not there already"?

On the second issue of worker earnings, the evidence directly refutes Roosevelt's charges. The employee share of corporate income did not decline, but instead steadily increased during the 1920s—from under 70 percent in 1920 to well over 70 percent during the last years of the decade.[6]

As Peter Temin, an economist at MIT, concluded, "The ratio of consumption to national income was not falling in the 1920s. An underconsumption view of the 1920s, therefore, is untenable." As of 1976, Temin observed, "the concept of underconsumption has been abandoned in modern discussions of macroeconomics."[7] In other words, the economic idea that inspired Roosevelt to launch the New Deal was so discredited it was no longer even discussed by economists just one generation after Roosevelt's death.

Consumption Boost

But the damage was done. To boost consumption, the New Deal had given some kind of government subsidy to farmers, factory workers, veterans, and even silver miners. The era of big government in America was launched.

Why did Roosevelt err? It is tempting to argue that he manipulated data and words to win votes in the short run with an idea that had no resilience in the long run. And, too, many of his Brain Trusters urged him to promote underconsumptionist thinking.

Another possibility is that Roosevelt popularized underconsumptionist ideas because he never understood free markets in particular or economics in general. He came from a wealthy family, and his mother said they never discussed economic ideas at home. When he went off to school he apparently never studied economics seriously or disciplined his mind to study subjects logically. At Groton, the rector, Endicott Peabody, voted for Hoover in 1932, readily conceding that Roosevelt was "not brilliant." At Harvard, Roosevelt was only a C or C-plus student. He showed little interest in his introductory economics course, which he took in his sophomore year.[8]

Afterward, at Columbia Law School, his professor for a public-utilities course, Jackson E. Reynolds, said, "Franklin Roosevelt was no good as a student. He didn't appear to have any aptitude for law, and made no effort to overcome that handicap by hard work. . . . He passed both of my courses, but he never received a degree because he flunked. Afterwards in offices downtown he made the same kind of records."[9]

Once Roosevelt was president, many of those who worked with him were startled by his undisciplined mind and economic ignorance. In a secret diary Brain Truster Raymond Moley wrote in May 1936 after a discussion with the president: "I was impressed as never before by the utter lack of logic of the man, the scantiness of his precise knowledge of things that he was talking about, by the gross inaccuracies in his statements. . . ."[10]

Moley suggests that both economic ignorance and political calculation shaped Roosevelt's criticism of free markets. In any case, what we can learn from this historical episode is that bad economic ideas, if not effectively challenged, can sweep an ill-prepared man into the presidency, and permanently change the nation's economic direction. □

1. Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt* (New York: Random House, 1938), I, p. 650.
2. Ibid., pp. 751–52.
3. Ibid., p. 784.
4. Ibid., p. 751.
5. Bureau of Census, *Historical Statistics of the United States* (Washington, D.C.: U.S. Department of Commerce, 1975), p. 302.
6. Peter Temin, *Did Monetary Forces Cause the Great Depression?* (New York: W.W. Norton and Co., 1976), p. 4. See also Thomas B. Silver, *Coolidge and the Historians* (Durham, N.C.: Carolina Academic Press, 1982), p. 136.
7. Temin, pp. 4, 32.
8. Geoffrey C. Ward, *Before the Trumpet: Young Franklin Roosevelt, 1882–1905* (New York: Harper & Row, 1985), pp. 180, 207, and Daniel R. Fusfeld, *The Economic Thought of Franklin D. Roosevelt and the Origins of the New Deal* (New York: Columbia University Press, 1954), p. 23.
9. Jackson E. Reynolds interview, Columbia Oral History Project, p. 42. I would like to thank Gary Dean Best for calling this interview to my attention.
10. Raymond Moley diary, May 4, 1936, Hoover Institution.

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Paradigms, Contrarians, and Keynes

by Nelson Hultberg

In the field of ideas, why are dramatic new visions of truth so often met with vehement opposition from a society's intellectuals—the very men of the mind who are most dedicated to the pursuit and demonstration of truth? How can today's intellectuals—so acutely aware of humanity's bigoted resistance in the past to Galileo, Semmelweis, Pasteur, and other radical discoverers—succumb to the same blind obstinacy in the face of the new truths confronting them?

There are several reasons why this propensity for intolerance to new thinking has prevailed throughout history among intellectuals. As the physicist Fred Hoyle reminds us, scientists are human. They are, far more often than the lay public perceives, victims of dogmatism and the tendency of all humans to argue from preset ideas.

Despite their much-heralded pledge to objective inquiry, scientists are quite capable of bias and suppression in order to preserve their long-standing beliefs. When a large portion of one's life has been passionately devoted to the validation of an idea, it becomes most difficult to accept the invalidity of that idea. Therefore, truth, the most highly prized goal of all, is often forsaken to protect fragile egos and support previous convictions.

This tendency of scientists to be obstinate in the face of new truth manifests itself through the paradigm shift. As Thomas S. Kuhn demonstrated in *The Structure of Scientific Revolutions*, all science is based on the establishment of paradigms, or what can be termed an overall "way of viewing things" in a particular field. And once a paradigm is established, it becomes difficult for most thinkers to dispute its basic premises even when that paradigm is found to be in error.

For example, the first-century Egyptian astronomer Ptolemy established the Ptolemaic paradigm of the solar system, which depicted the earth as its center with the sun revolving around the earth instead of vice versa. Even after Copernicus made it obvious around 1500 that the Ptolemaic concept was a fallacy, it still prevailed in intellectual circles for another 180 years until Galileo drove the final nails into its coffin.

Herein lies one of the great human dilemmas: Once a way of viewing things is entrenched in any given field, even when new knowledge comes along to refute the paradigm, it becomes practically impossible (because of the flaws of human nature) for most intellectuals to think outside that paradigm's constraints. They will defend the entrenched view even when its basic conception is shown to be foolish and impossible, especially if they have devoted a vital part of their lives to the teaching and promotion of that way of viewing things.

This is our situation in many intellectual fields today. Like the medieval dogmatists,

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When Say's Law is considered along with Mises's theory of money and credit, one can easily see the fallacy of Keynes, for no amount of paper money injected into an economy in excess of the growth of goods and services will increase the purchasing power of the people.

today's academic community also clings to some irrational paradigms in face of overwhelming evidence that their views are as untenable as the geocentric theories of old.

Let's take one of the most entrenched paradigms of our day as an example: Keynesian demand theory in economics. Despite its demonstrable weaknesses, our establishment scholars cling to it. When presented with strong, logical refutations, 80 percent of our academic community reacts with bemused scorn.

Evidence is rife throughout the world that the Keynesian model is a false and dangerous way to approach political economy. Inflating demand with fiat currency is not some kind of "new economics" as Keynes and Franklin Roosevelt's Brain Trust of the 1930s claimed. It is not legitimate economics at all, but just another excuse for powerful governments to debase the currency in order to confiscate their citizens' wealth.

Neo-Keynesian Variants

Original orthodox Keynesianism may be dead as a viable theory, but just as neo-Ptolemaic theories prevailed for almost 200 years after Copernicus, neo-Keynesian variants still control government policy today, well after Ludwig von Mises explained how markets work. They are still entrenched as the basis for statism and are the reasons for the exacerbated boom-bust cycles in our economy over the past decades.

Keynesian economics, of course, got its start during the Great Depression. In essence, Keynes's message to a bewildered 1936 world was this: Vast amounts of government investment must be created to stimulate and perpetually maintain consumer demand at a high level. If this is done, the problems of poverty and business cycles will be alleviated. The weakness of free enterprise is that it can't produce enough purchasing power, that is, demand, among the people. The government must take control of the monetary system, for Say's Law of Markets is no longer valid.

Say's Law is the brainchild of J.B. Say, the nineteenth-century French economist. It states that production is the cause of consumption, or that the people's productivity determines their purchasing power. For example, if a man plants and harvests a ten-acre field of corn, his purchasing power in the marketplace will be whatever that corn is worth in trade to his fellow man. His production of corn has created the level of his demand for clothes, transportation, entertainment, and so on.

When Say's Law is considered along with Mises's theory of money and credit, one can easily see the fallacy of Keynes, for no amount of paper money injected into an economy in excess of the growth of goods and services will increase the purchasing power of the people. This is because the prices of those goods and services will rise in response to the increase in the money supply, which negates the effect of the extra paper money in the people's pockets.

If Say's Law is valid, then the Great Depression should have been handled by letting prices and wages seek their own level and allowing Say's Law to operate. If this had been done, the natural productivity of the people would have created the necessary purchasing power to climb out of the Depression. The reason it wasn't handled

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this way is that Keynes supposedly showed that Say's Law was unworkable under modern-day conditions.

But as Mark Skousen has pointed out, Keynes gravely distorted Say's Law in order to refute it.[1] He created a straw man and then knocked it down. Such intellectual legerdemain allowed Keynes to pose as some sort of super-savant with a brilliant new theoretical insight into how the world works.

Many years ago, Henry Hazlitt also saw the foolishness of Keynes and pointed out that his allegedly brilliant refutation consisted of declaring Say's Law invalid because it is invalid.[2] This is akin to a physicist suddenly declaring that the law of gravity is no longer applicable to humans because it is no longer applicable.

One can almost imagine FDR's reply to his Brain Trust when informed of the wonders to be worked with Keynes's "new economics." If capitalism has reached its mature stage and can no longer produce enough purchasing power, we in Washington must step in and get the system going again. If people don't have enough money, all we have to do is print up more and our problems will be solved. We can usher in an unbounded future of government-managed prosperity. Stripped of all the eloquent conceptualizations and slick technical jargon, that was Keynes's great "innovation" and "revolutionary insight."

Falling for the Lure

The folly of such a proposal and the willingness of learned men to fall for its lure are terribly embarrassing when one thinks through the basic principles involved and projects the long-run ramifications. Nevertheless, the most powerful office of the most powerful country in the world accepted such fiscal flimflammery as valid economic theory. And every administration since FDR's has been doing the same thing—printing up more money to make us all more "prosperous."

Neo-Keynesians justify their monetary inflation with the claim that such policy is necessary to "create economic growth." But this is readily seen for the lie that it is by simply investigating our economic history.

As recorded in *The Statistical History of the United States*, real wages for the workingman tripled in the years 1850–1913, and the GDP increased over 500 percent, averaging 4.3 percent annual growth from 1870–1913—all without any inflationary infusions of fiat money from the Fed because there was no Fed.[3] This highly productive era, based on the "barbarous relic" of gold, was accompanied by an actual *deflation* of prices. From 1800 to 1913 there was an overall 30 percent *reduction* in the Consumer Price Index from 43 to 30.[4]

Despite these irrefutable facts, Keynesians still maintain that government inflation of the money supply is mandatory for a productive economy. This in the face of the total destruction of the dollar since 1913. This in face of the fact that average GDP growth is only 2.5 percent annually today. This in face of the fact that growth in real wages has been impeded for the past 30 years because the combine of inflation and taxes diminishes the workingman's increased wage income.

It is easy to understand why the Washington establishment does not want to face the economic facts of reality regarding this issue. It would mean that its Keynesian and neo-Keynesian paradigms are (and have been for 65 years) theoretically wrong. Accepting such a truth would mean the same thing that accepting Copernicus's discoveries meant to the Catholic Church in the sixteenth century—relinquishment of substantial power. In this case, Washington's neo-Keynesian bankers and politicians would have to relinquish substantial power to the private sector, which government establishments naturally hate to do.

Therefore, Keynesian and neo-Keynesian irrationality is not dead by any means. The idea that governments can direct their economies for the betterment of the citizenry by manipulating interest rates and levels of liquidity continues to hold sway over today's intellectuals, even though such a centralized-planning paradigm is insidiously evolving into economic fascism. The paradigm lives in

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the minds of statists everywhere as the ruling economic dogma of modern times, and they cannot (or will not) think their way out of it. As a result, mankind continues to suffer needlessly.

Sadly, this is the inevitable nature of the discovery of truth. The great majority of any society's intellectual community becomes locked into its established paradigms even when they are false. Only a select few who are *contrarian* thinkers can see the truth and are willing to promote it.

It is to these minds that the world owes its advances (its paradigm shifts)—socially, politically, morally, and scientifically—for the contrarian is possessed of the vision to see beyond his fellows and the courage to challenge firmly entrenched error. Most important, the contrarian is not plagued with the desire to be popular and acclaimed in his own time. He cares little for establishment acceptance. Not that he will shun acclaim if it happens to come to him, but it is not the primary motivation driving him. Herein lies his strength and one of the important reasons for his acute clarity.

Open and Creative Minds

There is a law of life that is identifiable here, and it can be stated thus: Truth will always reveal itself only to the contrarian, for his is the only mind open enough and creative enough to see it. Not that all contrarians speak truth. But the truth will always come to us only through contrarian minds—thinkers like Socrates, Galileo, Pasteur, Einstein, Mises. Establishment intellectuals are needed to solidify and disseminate already confirmed truths, but they are not willing to promote new truths. And because of the flaws in human nature, they invariably become roadblocks to those contrarians who are willing.

Such is the condition of our scientific and philosophical fields today. As always, the contrarians are at war with the establishment, and there are profound revolutions going on. Old established paradigms are being shattered. New discoveries and visions in economics, physics, philosophy, biology, medicine, and more are pouring forth to stir up elemental debates presumed to be settled by those who argue from preset ideas.

Every advance that mankind makes throughout history is accomplished because small groups of contrarian thinkers are willing to challenge the old order. In doing so, they foment a mental revolution and teach their fellow men a new way of thinking.

This is the paradigmatic nature of intellectual progress. If one wishes to know truth, he must understand that the established order will seldom provide it for him. He must possess the power to think for himself, or as Ayn Rand put it, "see through his own eyes." He must cultivate a totally independent curiosity, and he must be desirous of whatever the truth turns out to be—even when it spoils his fondest, previous convictions.

The reason human civilization advances so haltingly and laboriously is that there are only a few intellects capable of such independence in any given generation. □

1. Mark Skousen, "Say's Law Is Back," *The Freeman: Ideas on Liberty,* August 1999, pp. 54–55.
2. Henry Hazlitt, *The Failure of the "New Economics": An Analysis of the Keynesian Fallacies* (Princeton, N.J.: D. Van Nostrand, 1960).
3. *The Statistical History of the United States from Colonial Times to the Present* (Stamford, Conn.: Fairfield Publishers, 1960), pp. 91, 141, 409, 413.
4. *The World Almanac 2002* (New York: World Almanac Books, 2002), p. 103.

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CAPITAL LETTERS

Do Airlines Have the Right to Search Passengers?

To the Editor:

I recently read James Otteson's article, "This Is America?" in the July 2002 *Ideas on Liberty*. It is my opinion that an airline employee's demand for a photo ID is in no way a violation of one's constitutional rights. Furthermore, the searching of carryon luggage, random or otherwise, by airport security personnel also does not constitute a Fourth Amendment violation. I have no more problem with these searches than I do with the searches of my hip bag before I enter an amusement park or a concert. They are a monumental pain in the posterior, but that is all.

You have a choice when deciding whether or not to submit to these searches. You can either submit to the search or walk away. The airlines are a private industry, and it is unfair to hold them responsible for security while at the same time not giving them the authority to do so.

I am fully aware of the possibility that there is an angle to this that I am completely missing.

—Ronnie Applewhite
ronnieapplewhite@hotmail.com

James Otteson replies:

I agree that a private airline should have the right to have whatever security measures it wants—precisely because, as you say, one can always go elsewhere. My objection comes when the government forces all airlines and airports to have the same set of "security" measures, whether they want to or not, whether they are effective or not. With a private airline, you may complain about a policy you don't like and they might try to accommodate you; if you complain at an airport, you might get arrested (as I almost did). So, as far as I am concerned, it's the government in this case that is the problem.

No Trade with Cuba

To the Editor:

Let me respectfully point out some major weaknesses in Doug Bandow's article on Cuba (July 2002). Bandow, a writer whom I admire and whose books and commentaries I have always enjoyed, was misled by the likes of Ricardo Alarcon, a devious man characterized as a dog that barks only while under the protection of his master. Once Fidel Castro is gone, so will his lapdog Alarcon be gone. Elizardo Sanchez is a socialist, who before serving time lived in expropriated property and wants his brand of collectivism for Cuba. Sanchez and his state-controlled band of dissidents are the only opposition tolerated in Cuba. The real opposition, like Dr. Oscar Elías Biscet or Marta Beatriz Roque, is either in jail or under house arrest, unable to meet freely with journalists such as Bandow.

Cuba has been bankrupt since 1986 and has defaulted on all foreign loans. Castro owes European bankers $12 billion; Cuba's debt to Russia is estimated to be over $20 billion. Instead, Fidel asserts Russia owes him for capitulating to capitalism! Neither private property rights nor the sanctity of contracts is recognized in Cuba. And yet the Maximum Leader is one of the richest men in the world—worth at least $1.4 billion, according to *Forbes* magazine (1997). Some of this money has been traced back to American property confiscated in 1960 when Castro "nationalized" $15 billion worth of American property. Do you trade with thieves who openly steal your property?

Travel restrictions are a joke, and as for the embargo, all that is left standing is for Congress to offer loans subsidized by American taxpayers to the dictator so we can sell

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him agricultural goods. Only a fool would lend money to a known thief who has stolen from him previously, who does not pay his debts, and who now wants to borrow from you to buy the goods he can no longer steal!

When it comes to ruthless dictatorships, libertarian manuals, laissez faire, and rational economics are of no use because the Invisible Hand of Adam Smith is blatantly shackled to the barbwire.

—Miguel A. Faria, Jr., M.D.
hfaria@mindspring.com
Author, *Cuba in Revolution: Escape From a Lost Paradise*

Doug Bandow replies:

Surely the burden of proof for maintaining a 41-year-old embargo that has failed to achieve any positive results should lie with its advocates. Yet Dr. Faria fails to offer one positive word on its behalf. And his attack on Elizardo Sanchez, who criticizes Castro and has spent over eight years in prison, is curious.

Castro is a thug and his regime nationalized American assets. It is no different from scores of other autocratic kleptocracies throughout the Third World destined for the dustbin of history. Yet the United States has correctly allowed private trade with most of them. (Subsidized loans are inappropriate for good as well as bad regimes, but that has nothing to do with the embargo and travel ban.)

Of course, lifting the embargo guarantees nothing; the Cuban regime more systematically controls the economy than does, say, China. But current policy is a complete, utter, and protracted failure: even after the end of Soviet subsidies, and contrary to the predictions of many Cuban-Americans, the Castro regime still survives—despite sanctions. Allowing private trade and travel would have a subversive impact, most importantly, highlighting the glaring economic inequalities under communism.

If Dr. Faria really believes what he writes, I look forward to his campaign to ban Cuban-Americans from traveling to Cuba and remitting between $700 million and $800 million annually to the island. Surely Cuban-Americans should not demand a privilege denied all other Americans, especially when by their own argument they thereby are subsidizing the Castro tyranny.

Foreign Aid Does Harm

To the Editor:

I agree completely with the thrust of "An Alternative to Failed Foreign Aid," by Doug Bandow (August), but would like to add one point. Bandow stated, "But one of the lessons of foreign aid is that government cash transfers accomplish little." They accomplish little good, but they do accomplish much harm. Aid to foreign governments often goes to tyrants who are hated by their own people. Those tyrants have many enemies. When the United States government gives tyrants financial aid that helps them stay in power, their enemies become enemies of the United States government.

—Roger Clites
lclites@juno.com
Milligan College, Tennessee

Mental Illness Is Real

To the Editor:

In the August issue of *Ideas on Liberty* Sheldon Richman refers to the "facts about Nash and mental illness," but does not do justice to them. He suggests that schizophrenia is just a "problem in living" that does not warrant "involuntary 'treatment.'"

Not so. I know. I've been there myself, decades ago: I had catatonic schizophrenia back in 1972, plus a couple of bouts later that decade with another type. Mental illness, I know, is an intensely painful condition both for the victim and those persons close to him or her. Part of my cure was involuntary electroconvulsive therapy. I remember coming home after shock therapy—my joy from being both home and restored to my self was so intense I wept uncontrollably when I came to the front door. . . .

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There are two basic features of mental illness: It afflicts the will (i.e., the ability to choose a course of action), and it involves confusion between illusion and reality. . . .

"Hearing voices" similarly involves a disease of the will, at least when those voices bark commands. Such auditory hallucinations involve a confusion between illusion and reality, because the "listener" to "voices" does not realize at the time what Nash later realized, that "you're really talking to yourself."

Richman makes much of the "fact" that Nash was "cured" by an exertion of his will. But that's putting the cart before the horse. His will was atrophied during the intense phase of his illness. Once his illness went into remission, then he could understand how and why he'd sought an "escape" from reality, and avoid making the mistakes that led him down into madness.

—*Name withheld by request*

Sheldon Richman replies:

Will is something one does, not something one has. Thus it can be diseased only metaphorically. John Nash's own statements—that he chose madness to make his life more exciting, that the "voices" he heard were his own, and that he, drug-free, traded his madness for productive work—speak for themselves. Further, he objected to being forcibly "treated." In a free society that ought to count for something. The letter writer says he is grateful for the coercion he was subjected to. With all due respect, many others have had quite the opposite reaction, as the article by Leonard Frank elsewhere in this issue illustrates.

Inspired? Shocked?
Delighted? Alarmed?
Let us know.

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IDEAS ON LIBERTY
NOVEMBER 2002

The Wrecking Ball and the Prosperity Tower

The economic question of greatest importance to Adam Smith remains the economic question of greatest importance today: what causes wealth? What conditions best encourage economic growth and widespread prosperity?

The general answer is easy: private property rights and freedom of contract. When everyone enjoys the right to acquire, own, use, and exchange property rights voluntarily, free markets result. And free markets, in turn, promote an ever-deeper division of labor and increasingly complex commercial and industrial arrangements. The consequence is widespread and increasing prosperity.

And we know now—in the aftermath of the appalling carnage and destitution spawned by the several varieties of twentieth-century socialism—that a necessary condition for prosperity is that government be reasonably limited. People create wealth only insofar as they are free.

Imagine a skyscraper; call it the Prosperity Tower. Now imagine, hanging next to this skyscraper, a giant wrecking ball. It starts to swing. The wrecking ball pounds the skyscraper. The building is probably sturdy enough to remain standing and functional if it suffers only one or a few hits. But if the wrecking ball keeps swinging relentlessly, the Prosperity Tower eventually will collapse.

Donald Boudreaux (dboudrea@gmu.edu) is chairman of the economics department of George Mason University and former president of FEE.

From the rubble, enterprising and energetic people—entrepreneurs, financiers, architects, construction workers—begin to rebuild the Prosperity Tower. They complete a few floors when the wrecking ball again starts to swing. It destroys the nascent building.

Hoping against hope, these or other energetic and enterprising people again undertake a rebuilding effort. As before, they complete the early stages of the construction and then the wrecking ball again swings into its awful action, demolishing the fruits of their efforts.

Eventually, the mere threat of a swinging wrecking ball will discourage anyone from attempting to rebuild the Prosperity Tower. Even if the wrecking ball itself is currently hanging idle, its history of swinging into action whenever the Prosperity Tower begins to reach skyward will ensure against the Tower's construction.

Government is like a wrecking ball. Taxation robs producers of the fruits of their efforts, and regulation substitutes the centrally imposed and politically inspired commands of the few for the decentralized, richly textured, and voluntary plans of the many. Economic prosperity is assaulted. Too many such assaults turn the Prosperity Tower into rubble.

For prosperity, freedom is indeed necessary. But freedom is not sufficient.

For a skyscraper to reach for the heavens, not only must its skyward path remain free of swinging wrecking balls; *individuals* must

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also possess the creativity, trust, and gumption necessary to build the tower. No matter how minimal the threat of swinging wrecking balls, a skyscraper will not arise without positive and creative actions by individuals.

Entrepreneurs must envision the use and possibility of the skyscraper; architects must design it; investors must see its promise as well as see the trustworthiness of the builders; suppliers must produce and make available reliable amounts of millions of different building materials; contractors, subcontractors, and hundreds of construction workers must each contribute their own unique skills and their individual initiatives toward the project.

The amount of creativity, cooperation, and effort required to build a skyscraper is so vast as to be beyond description. Yet each fragment of this creativity, cooperation, and effort necessarily is contributed by an *individual*—an individual who could choose to refuse to contribute. If too many individuals make this choice, no skyscraper will be built.

Overlooked Requirement

The necessity of positive and creative individual human actions is often overlooked in the Western industrialized world—even by champions of free markets and liberty. I've heard too many of my fellow economists blithely predict that pro-freedom changes in the constitutions and statutes of places such as the former Soviet empire and sub-Saharan Africa will quickly create prosperity.

But when the wrecking ball stops swinging, the Prosperity Tower doesn't automatically arise as a force of nature. Prosperity requires also a culture and a set of norms that promote commerce, enterprise, and industry. It is true that such culture and norms are likely to emerge when freedom reigns, but in places where people have long been unfree, the culture and norms necessary for economic growth do not materialize instantaneously with pro-freedom changes in the constitution and statute books. Such cultural change takes time.

People long unfree do not immediately learn those intricate norms and rules necessary for civilization, for example, the norm of recognizing that strangers who speak different languages and who worship different gods are nonetheless people with whom mutually advantageous trade is possible, or the rule of keeping promises to others even when breaking promises might yield short-run personal benefits.

Without such norms and rules, and without the desire for material gain, merely stopping the wrecking ball of government intervention from swinging will not cause the Prosperity Tower to arise.

Lest I be misunderstood, I express complete agreement with one of my great heroes, Thomas Babington Macaulay, who wrote: "Many politicians of our time are in the habit of laying it down as a self-evident proposition, that no people ought to be free till they are fit to use their freedom. The maxim is worthy of the fool in the old story, who resolved not to go into the water till he learned to swim. If men are to wait for liberty till they become wise and good in slavery, they may indeed wait for ever."

But Macaulay also understood that changes in social norms are every bit as important as "public measures"—changes in constitutions and statute books—for peace and progress.

In places long unfree we must be patient in letting freedom do its work. The failure of Albania, Bulgaria, Uzbekistan, and other newly freed places to quickly become prosperous is no indictment of freedom. The slowness and rockiness of their progress toward prosperity is an unavoidable consequence of their long slavery. These peoples must learn over time to be free and successful. And they will do so as long as no wrecking ball pounds them too harshly. □

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BOOKS

Wilson's Ghost: Reducing the Risk of Conflict, Killing, and Catastrophe in the 21st Century

by Robert S. McNamara and James G. Blight

PublicAffairs • 2001 • 240 pages • $24.00

Reviewed by Doug Bandow

Despite the end of the Cold War, the world remains a dangerous place, as vividly demonstrated on September 11. The twentieth century was the bloodiest, most murderous 100 years of human history. Writing before the terrorist attacks of last fall, former Secretary of Defense and World Bank President Robert McNamara and Brown University Professor James Blight present their agenda for making this new century less bloody.

Wilson's Ghost correctly identifies several major challenges, but its solutions fall short. In the authors' view, "we are being pursued by [President Woodrow] Wilson's ghost: by Wilson's failure to convince the European allies to base their foreign policy upon the moral imperative of preventing carnage; and by his failure to convince the U.S Senate to ratify" the Versailles Treaty. But Wilson's most important mistake was taking the United States into World War I, a conflict between two morally tainted militaristic blocs, in which American security was not at stake. That intervention had disastrous consequences, but McNamara and Blight fail to draw the right conclusions and advocate policies that would keep America dangerously entangled in foreign military escapades.

McNamara and Blight observe that "throughout the post-Cold War period, brutal war and communal killing on an alarming scale have increased, and the danger of nuclear catastrophe remains ever present." To that list now can be added the threat of terrorism, with potentially horrific consequences should terrorists gain access to weapons of mass destruction. The authors rightly worry that "Wilson's ghost has already appeared in the 21st century, as Russia and China have become increasingly suspicious of the United States and the West for betraying them, reneging (as the Russians believe) on commitments not to expand the NATO alliance on Russia's western border; and (as the Chinese believe) on commitments to avoid supporting independence for Taiwan." War with either of those states would be disastrous.

The authors call for "realistic empathy," that is, understanding the other side's perspectives, to help guide U.S. policy. But they miss the logical result of such empathy: adopt a less interventionist and thus less provocative policy. Leave Europe's defense to the Europeans; leave Taiwan's defense to Taiwan.

McNamara and Blight also address the hideous calamity of inter-communal killing. In contrast to some activists who would have America police the globe, they acknowledge the almost endless complications that bedevil the initiation of war for allegedly humanitarian purposes.

Their unsatisfying response, however, is to have the United States act only in a multilateral context under a reformed United Nations. They fail to develop any sort of criteria that would make humanitarian intervention appear to be anything other than arbitrary and self-serving. Today the United States sometimes intervenes when white Europeans are dying, their plight ends up on television, and the killers are from an unimportant, unpopular country. How would McNamara and Blight choose differently from among the scores of killing grounds around the globe?

Furthermore, the authors fail to explain why Washington politicians are authorized to risk the lives of young Americans in purposes unconnected to the vital interests of their own national community. However tempting it may be to turn 18-year-olds into guardians of a new global empire in an

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attempt to impose Pax Americana, it is not an appropriate role for a government that claims to be republican.

Perhaps most frustrating is McNamara's and Blight's chapter on nuclear weapons. They advocate a "nuclear-weapons-free world," a worthy goal. But their action program, for nations to bargain their way down to zero, seems wildly unrealistic. The technology is loose; the number of countries with "turnkey" capabilities will increase; there will always be nations hoping to gain an advantage over historic enemies or new rivals. Better would be to promote the spread of defenses against missiles, dismissed by the authors, negotiate restrictions on the size of arsenals, and make nuclear weapons "safer" through better command-and-control technologies, hotlines among antagonistic states, and so on. Most important would be to avoid unnecessary confrontations among nuclear-armed states, another reason for the United States to leave populous and prosperous allies to defend themselves.

This is also the best prescription to address terrorism. America is hated for many reasons, but few people are willing to sacrifice their lives out of abstract hatred of, say, McDonald's or MTV. When they believe that intervention has placed the United States at war with them, however, they are willing to kill in return.

"Listen carefully, and with an open mind, to Wilson's ghost," enjoin McNamara and Blight. As well we should. But Wilson's ghost is not saying intervene more carefully. It is saying stay out when you can. □

Doug Bandow is a senior fellow at the Cato Institute and a former special assistant to President Ronald Reagan.

Crypto: How the Code Rebels Beat the Government—Saving Privacy in the Digital Age

by Steven Levy

Viking • 2001 • 356 pages • $25.95

Reviewed by Jim Bovard

Steven Levy's *Crypto* describes how a small band of high-tech geeks and others defeated the federal government's efforts to outlaw cryptography—the use of secret codes and ciphers to scramble information so that it's worthless to anyone but the intended recipients.

The book begins in the 1960s with the efforts of people at MIT and elsewhere who were fascinated by computer security and cryptography. Breakthroughs by private researchers set off alarms at the National Security Agency (NSA), which unsuccessfully sought to get Congress to authorize the agency to suppress publication of private cryptography research. In the mid-to-late 1980s, battles erupted over U.S. export controls that thwarted the overseas sales of Lotus Notes and other commonly used software, because the NSA feared that their mild cryptographic features could thwart U.S. spying.

When William Clinton was elected president, many high-tech wizards thought that Valhalla had arrived: finally—a team of people who understood how computers were revolutionizing life and why the government shouldn't throttle progress. However, the tech gurus greatly underestimated the statism and power lust of the Clintonites. Levy reports that within a few months of taking office, "The Clinton people had already mentally aligned themselves with the government insiders at the NSA, the FBI, the Justice Dept, and the CIA."

On April 16, 1993, the Clinton administration revealed that the NSA had secretly developed a new microchip known as the Clipper Chip. A White House press release announced "a new initiative that will bring the Federal Government together with industry in a voluntary program to improve

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the security and privacy of telephone communications while meeting the legitimate needs of law enforcement." This was practically the last time that the word "voluntary" was mentioned.

Clipper Chip advocates presumed that it should be a crime for anyone to use technology that frustrates curious government agents. The ACLU noted, "The Clipper Chip proposal would have required every encryption user (that is, every individual or business using a digital telephone system, fax machine, the Internet, etc.) to hand over their decryption keys to the government, giving it access to both stored data and real-time communications. This is the equivalent of the government requiring all home-builders to embed microphones in the walls of homes and apartments."

Not surprisingly, the agency most hungry to spy on Americans was the Federal Bureau of Investigation. FBI Director Louis Freeh told a Senate committee in March 1994 that Americans "want to have a cop on the digital information highway." Unfortunately, what Freeh demanded and Congress enacted was the equivalent of not just having a cop on the digital information highway, but also having a cop potentially listening to every phone call and reading every e-mail.

Levy offers insights into how easily most congressmen were persuaded to put a knife in the back of Americans' privacy. He notes, "NSA briefings were notorious in Congress. They involved a dramatic presentation by the NSA on why our international eavesdropping abilities were so vital. . . . They initiated legislators into the society of Top Security, implicitly shifting their alliance from the citizenry to the intelligence agencies." Unfortunately, few congressmen were either knowledgeable or confident enough to challenge the claims made in secret hearings. However, the public uproar—from geeks, to talk show hosts, to civil liberties groups—had a huge impact.

Crypto is rich in personal and technical detail. However, the style is often verbose and tedious. The book is also frustrating because it implicitly portrays the defeats of federal power grabs in the 1990s as a final victory for freedom. The book's subtitle, *How the Code Rebels Beat the Government—Saving Privacy in the Digital Age*—seems ironic in the wake of 9/11 and the passage of the USA Patriot Act—which greatly increases government surveillance.

For instance, the FBI is increasingly installing keystroke monitoring software on people's computers. This software allows the government to record every keystroke anyone makes while using that computer. The feds will not need to ask your passwords because they can capture whatever you type into the computer. This will allow the feds to thwart anyone who attempts to keep prying eyes out of his work.

As long as politicians and bureaucrats lust for power, the battle for privacy must continue. *Crypto* is a reminder of how courage and ingenuity triumphed in the past and why the friends of freedom must be wary and ready in the future. □

Jim Bovard is the author of Lost Rights *(St. Martin's, 1994) and* Freedom in Chains *(St. Martin's, 1998).*

Civil Rights and Public Accommodations: The Heart of Atlanta Motel and McClung Cases

by Richard C. Cortner

University Press of Kansas • 2001 • 240 pages • $29.95

Reviewed by David E. Bernstein

Title II of the 1964 Civil Rights Act bans discrimination on the basis of race, color, religion, or national origin in public accommodations. The law reflected a growing belief that any establishment that holds itself out as open to the public should not be permitted to discriminate. The Act had broad public support, except in the South.

There were some, however, who advanced principled objections to Title II. Ayn Rand, for example, wrote that "[j]ust as we have to protect a communist's freedom of speech, even though his doctrines are evil, so we

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have to protect a racist's right to the use and disposal of his own property." Philosophical objections to Title II's regulation of public accommodations, however, were largely drowned out by the argument that it violated "states' rights."

Several southern businessmen challenged the constitutionality of Title II as exceeding congressional power. Political science professor Richard Cortner's *Civil Rights and Public Accommodations* is a workmanlike description of that litigation and reminds us how much is at stake when politics and property rights collide.

Cortner provides many interesting details about the litigation and the litigants. One interesting aspect of the litigation was the Justice Department's reliance on the Commerce Clause to justify the constitutionality of the law, rather than on the Fourteenth Amendment. That amendment forbids states to deny equal protection of the law, and section 5 suggests that Congress has the primary responsibility of enforcing that prohibition. Arguably, then, Congress also gets to decide what "equal protection of the law" means, including whether states must prohibit discrimination in public accommodations. The 1875 Civil Rights Act contained such a provision, but it was struck down by the Supreme Court eight years later in the *Civil Rights Cases*. The Court there held that the Fourteenth Amendment didn't grant Congress the authority to regulate private businesses.

Many scholars believe that the *Civil Rights Cases* were ripe for reversal in the 1960s had the Justice Department chosen to take that approach. Instead, the government, fearing that the Court might not reverse a long-standing precedent, played it safe by arguing that Congress's authority to enact Title II arose out of its power to regulate interstate commerce. (Allegedly, interstate commerce was "burdened" if businesses like McClung's Barbecue could choose whom to serve.)

Once that issue of strategy was resolved, the details of the briefs presented by the government, discussed in detail by Cortner, seem a bit superfluous because the litigation had a foreordained conclusion. It was inconceivable that the "liberal" Warren Court would hold Title II unconstitutional. First, the Court almost never ruled against civil-rights litigants. Second, the Commerce Clause, a bête noire of statists for generations, had already been eviscerated by FDR's Supreme Court in the 1942 case *Wickard v. Filburn*. In that case the Court held in part that Congress's power to regulate "interstate commerce" included the power to prohibit a farmer from growing wheat on his own farm for his family's private consumption, activity that in the normal sense of things is neither "interstate" nor "commerce." The Court had no interest in reviving the limitations on congressional power inherent in the clause, especially not in a case where its political sympathies clearly lay with the government.

While Cortner discusses the constitutional implications of the Title II litigation, he unfortunately does not consider the broader ramifications of Congress's decision to regulate public accommodations and seems to accept the idea that the government must regulate private property so as to ensure nondiscrimination in public accommodations. Title II itself was relatively narrow in scope—it doesn't apply to private clubs, for example. Over the last two decades, however, various states and localities, inspired by Title II, have passed their own public-accommodations laws, with almost no limitations. In New Jersey, for instance, Little League baseball, a cat fancier's association, private social clubs, and the Boy Scouts have all been deemed "places of public accommodation" that may not discriminate in any way against a wide range of groups. Alas, Cortner never mentions the way that public accommodations laws have, as the early opponents predicted, broadly impinged on civil society.

After state laws mandating segregation were invalidated, most businessmen desegregated quickly and willingly. Today, the battle in public-accommodations law is primarily over whether private social organizations should be left alone or whether their membership policies should be dictated by the government. Given the importance of

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autonomous private organizations as a check on the government and as a means of discovering new social and political ideas, the answer should be obvious.

Civil Rights and Public Accommodations provides a sound, if not especially exciting, description of the constitutional litigation over the federal government's initial foray into the regulation of public accommodations. But if the reader wants to understand the continuing controversy over the effects of that foray, he will have to look elsewhere. □

David Bernstein is an associate professor at George Mason University School of Law.

The New Americans: How the Melting Pot Can Work Again

by Michael Barone

Regnery Publishing • 2001 • 338 pages • $27.95

Reviewed by Fred Foldvary

During the past decade there has been a large inflow of immigrants into the United States, especially from Latin America and Asia, raising fears that the new immigrants may not merge as easily or swiftly into the American culture and economy as previous waves of immigrants. There have also been concerns that the black migrants from the south during and after World War II have not been sufficiently advancing economically.

Michael Barone's study reveals startling similarities between the old and new ethnic waves. Barone pairs the Irish with the blacks, Italians with Latinos, and Jews with Asians to demonstrate that "we've been here before." Recent immigration is a déjà vu of the earlier folks who came to America, repeating previous cultural and economic patterns. While acknowledging differences between the linked pairs and variation within groups such as Latinos, there are nevertheless common patterns of culture and history.

The New Americans has a chapter for each ethnic group, all structured similarly. Barone applies his extensive experience as a political historian, senior writer at *U.S. News & World Report*, and coauthor of the biannual *Almanac of American Politics* to describe the old country, journey to America, life in the new country, work patterns, family orientation, religious practice, education, prevalence of crime, political participation, distinctiveness as a group, emergence in sports and entertainment, and convergence into the American mainstream for each group.

Describing the Irish, Barone depicts the massive discrimination that they faced, their initial poverty and lack of entrepreneurship, the high degree of fatherless families, the importance of religion, and high rates of crime. These largely forgotten characteristics are surprisingly similar to those associated with black Americans. While we think of Irish today as no different in appearance from other Caucasians, Barone shows that attitudes 100 to 150 years ago were much like prejudices against blacks recently and presently. The Irish were regarded by many Americans as an inferior race. Some Irish rose to prominence in sports and entertainment, just as blacks did later. Both looked to government to obtain power and employment opportunities. But now the Irish have converged into America, although many have retained their ethnic identity.

Like the Irish, black Americans had an "old country," the old South, where most still resided until the 1930s. Like the Irish, blacks have had a lower rate of married couples, but they too made economic gains. Barone notes a key difference in government policy: racial quotas and preferences for blacks, which reduce their incentive to high achievement. Still, Barone observes that the racial divide is fading rapidly, just as ethnic divisions did for earlier immigrants. It took 120 years for the Irish to become fully assimilated, and Barone thinks it may not take as long for blacks, whose mass migration began 60 years ago.

The "uncanny resemblance," as Barone puts it, between Italian immigrants and the current wave of Latino newcomers shows that the Spanish-speaking arrivals too will

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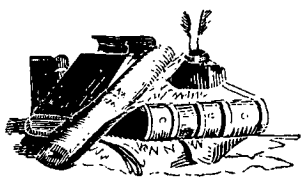
merge into mainstream America. Neither initially placed much value in education, but both were diligent workers and family-oriented, and both largely shunned welfare-state aid and, initially, politics. Just as Italians became interwoven into American life after being clustered in ethnic enclaves, so too do later generations of Latinos learn English and make economic advances. As with blacks, Latinos face a policy difference, especially with bilingual education, which in practice has often been Spanish-based. Its failures are now evident, and there is movement back to English-based instruction.

In contrast to Italians and Latinos, both Jews and East Asians traditionally valued schooling, and they have achieved higher levels of education than native-born Americans. Jews and Asians have strong family ties and low crime rates. Jews have become prominent in the professions and in the entertainment industry, and prejudice has receded as Jews have converged and intermarried to such a high degree there is fear in the Jewish community that it has become too assimilated and may lose its identity. Intermarriage is becoming high also with Asians as anti-Asian discrimination has vanished.

Barone not only paints a hopeful picture of the assimilation of immigrants into the America they came to for freedom and economic opportunity, but also shows that the American spirit has overcome prejudices. This is an excellent book both for information on the sociology of immigrants and for the policy implication that we need not fear any loss of American cohesion even with large amounts of immigration. □

Fred Foldvary teaches economics at Santa Clara University.



Ethics as Social Science: The Moral Philosophy of Social Cooperation

by Leland Yeager

Edward Elgar • 2001 • 352 pages • $160.00

Reviewed by Gene Callahan

Professor Leland Yeager has had a long and distinguished career as an economist. The focus of his economic research has been on monetary issues, but regular readers of his work will know of his wide range of interests and not be surprised to see him taking on a topic like ethics.

Yeager is to be congratulated for the modesty of his central claim, as demonstrated in the title: *Ethics* as *Social Science*, rather than *Ethics* Is *Social Science*. It is an important distinction, the significance of which Yeager highlights early on, when he tells us that his approach "recognizes that fact and logic alone cannot recommend private actions and public policies; ethical judgments must also enter in." Nevertheless, "[k]nowing that 'good intentions are not enough,' social science insists on comparing how alternative sets of institutions and rules are likely to work." Yeager is not attempting to produce a "system" that, when fed an ethical dilemma, will spit out a correct course of action. Rather, he is offering a distinctive vantage point on ethical problems, an angle that may yield a newly illuminative view.

In fact Yeager, following in the footsteps of Karl Popper and William Bartley, explicitly rejects the search for absolutely justified beliefs, in ethics as in other fields. Instead, he endorses Bartley's *pancritical rationalism*, holding that our beliefs only should be required to stand up to the best blows that rational criticism can deliver. The search for absolute justification is a snark hunt.

Yeager, as he acknowledges, is following in the footsteps of Ludwig von Mises and Henry Hazlitt in putting forward a utilitarian basis for ethics. He praises Hazlitt's *The Foundations of Morality* as the "best single book on ethics that I know of." Yeager's book, in fact, "echoes Hazlitt's ideas" in light of subsequent work in ethical theory.

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Throughout the book he contrasts utilitarianism with many alternative ethical views, including those of John Rawls, James Buchanan, Murray Rothbard, Robert Nozick, and Tibor Machan. (Among its other virtues, this book will leave the reader with a broad knowledge of current thinking on ethics.)

Yeager writes: "Utilitarianism as I conceive of it is a doctrine whose test of ethical precepts . . . is conduciveness to the success of individuals as they strive to make good lives for themselves. . . . Its fundamental value judgment is approval of happiness."

Based on his dismissal of calls for the absolute justification of ideas, Yeager does not attempt to provide such a justification for his happiness-based ethics. Instead, he asks critics to put forward a more plausible alternative of their own. He examines many possibilities, finding them all wanting.

Yeager recognizes that "happiness" may appear impossibly vague as the basis for a theory of ethics. Therefore, he further grounds his approach in the notion that social cooperation is so universally necessary to a good human life that it can often serve as a proxy for happiness, albeit one more clear cut. And it is that proxy that yields a role for the social sciences, and especially for economics, in ethical discourse, since economists specialize in studying various attempts to organize social cooperation.

Yeager takes up some common complaints against utilitarianism. While it has often been confused with hedonism, sophisticated utilitarians, such as Hume, Mises, Hazlitt, and Yeager himself, certainly do not recommend a life treading the "primrose path of dalliance."

Another confusion utilitarianism faces is the common failure to recognize the difference between act utilitarianism and rule utilitarianism. Act utilitarianism, which Yeager finds untenable, holds that each particular action should be evaluated as to whether it will enhance human happiness or not. Since such an act-by-act evaluation is impossible, act utilitarianism tends to degenerate into simply doing whatever one wants. Rule utilitarianism, embraced by Yeager, holds that moral rules should be evaluated as to whether they will enhance happiness or not. Such an approach avoids the temptation present in act utilitarianism to discard ethical rules whenever you really don't want to follow them.

Yeager goes on to discuss what is meant by "utility," the apparent difficulties for utilitarianism posed by the impossibility of summing different people's utilities, the charge that utilitarianism is immoral, and the relation of utilitarian ethics to duty and altruism. Each topic is covered in an enlightening fashion, building on previous insights.

Yeager's book should prove valuable even to those who are not ultimately convinced by its arguments because it will persuade them to take utilitarianism seriously. There is an important conversation to be had between various libertarian approaches to ethics, but that conversation is aborted when non-utilitarians attack utilitarian straw men. □

Gene Callahan is the author of Economics for Real People *and is an adjunct scholar at the Ludwig von Mises Institute.*

Implementing the Constitution

by Richard H. Fallon, Jr.

Harvard University Press • 2001 • 137 pages • $37.50

Reviewed by George C. Leef

Everyone likes to claim that the Constitution supports his preferred ideas on the role of government. Libertarians, including this reviewer, argue that interventionist measures such as Social Security are not merely bad, immoral policy, but unconstitutional to boot. Statists, however, are prone to claim that the Constitution authorizes the full panoply of legislative, executive, judicial, and administrative actions that have to such a great extent politicized the nation and moved us toward socialism. Who is right?

Harvard law professor Richard Fallon is certainly in the camp that sees the Constitution as justifying our super-sized government. Although he believes in the need for

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federal programs to regulate the economy, redistribute income, and so on, Fallon has written a provocative book that, if nothing else, should cause those of us with a deep commitment to liberty to think more seriously about the Constitution.

A central dispute that the author seeks to resolve is the proper way for judges (especially Supreme Court justices) to decide cases. He sets forth two radically opposed views on that question before proceeding to explain his own ideas. The first view is "originalism," the belief that the correct decision in a constitutional dispute is the one that best fits the original intent of the Founders (or amendment drafters). The second is what Fallon labels the "forum of principle" view, which would have judges always decide cases in accordance with crucial philosophical principles. The first approach requires that judges mainly be good historians; the second that they be good philosophers.

Fallon rejects both approaches. Originalism, he argues, is impractical because of "the gap between the framers' world and that which we inhabit." "No one," he continues, "contemplated Social Security, Medicare, or a nationally-funded welfare system." That is a standard statist argument—the world has changed in ways that require a far more expansive and powerful government than we needed back in the simpler days of the eighteenth century. But it's a bad argument. Madison and his colleagues did contemplate redistributive policies, but understood that they're inherently destructive and gave Congress no power to adopt them. That decision, based on a solid understanding of human nature, is just as sound today as it was in 1787.

Next, Fallon argues that if we had adhered to originalism, we wouldn't have had Court-mandated improvements in our political life, such as the "one-man, one-vote" rule announced in 1962, which compelled states to create legislative districts with equal numbers of citizens. The Constitution is silent as to how states are to set up their legislatures, and to people enamored of political equality, this decision is seen as a tremendous advance that we wouldn't have had under originalism. But is it much of an advance? I fail to see how our politics have become any better or our legislation any wiser because of it. We now have different kinds of gerrymandering and may have marginally shifted the influence of various interest groups, but legislatures in 2002 are no wiser than they were in 1962. Court-mandated "improvements" like that are nearly weightless compared to the massive, long-run harm done by such departures from originalism as reading the General Welfare clause to confer broad, new spending authority on Congress.

At the other end of the spectrum, Fallon goes easier on, but still rejects, the idea that the Court should forget historical meaning and just act as a "forum of principle." That position mainly appeals to devotees of big government who want the Supreme Court to embrace egalitarian ideals. Under it, "a principle counts as a constitutional principle if it would appear in the philosophically best explanation of the written Constitution and of surrounding practice and judicial precedent." Fallon agrees that the Court should serve as a "forum of principle," but not only as that, since it must often make accommodations to political reality. That may be true, but it seems to me that the greater problem with this approach is that it makes the Court a far more politicized institution than under originalism, as interest groups struggle to see that people with the philosophical outlook they prefer are nominated and confirmed. I'd cheer for the "forum of principle" approach if I believed that we'd have justices committed to principles such as "coercion should be minimized," but we are more apt to get justices enthralled with egalitarianism. No thanks.

Having disposed of the polar opposites, Fallon devotes several chapters to his ideas on how the Court should implement the Constitution. Among them is his concept that we have an unwritten constitution that authorizes many powers that are at best suspect under the written Constitution, such as presidential war-making authority. But, to borrow a phrase from Justice Antonin

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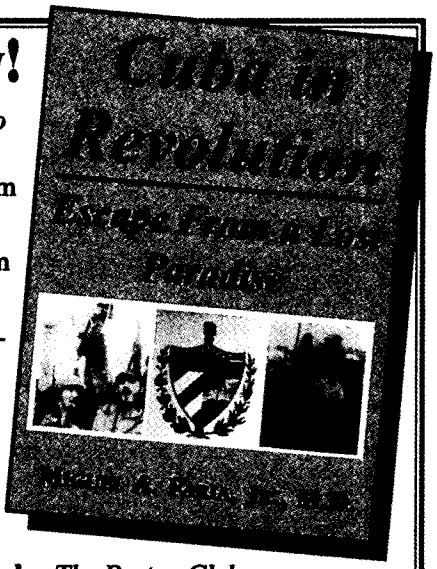
Scalia, this amounts to "constitutionalism by adverse possession," and the whole notion serves to justify far more governmental power than we'd have if the written Constitution were strictly followed.

While I find much to disagree with in *Implementing the Constitution*, it is nevertheless, a serious, thought-provoking book. □

George Leef is the book review editor of Ideas on Liberty.

Here's What the Pundits Say!



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IDEAS ON LIBERTY
NOVEMBER 2002

Unions Lose Again in Oklahoma

In my February column I celebrated Oklahoma's new right-to-work (RTW) law, which was adopted by voters 54–46 percent in September last year. A RTW law prevents unions with monopoly-representation privileges from forcing nonmembers to pay for representation they do not want. Section 14(b) of the National Labor Relations Act (NLRA) authorizes states to enact such laws. Several unions sued in federal district court to overturn the new law. They lost, but the details are instructive, and the unions are likely to appeal.

The new law says, in part: "No person shall be required, as a condition of employment, or continuation of employment, to: 1. Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary support of a labor organization; 2. Become or remain a member of a labor organization; 3. Pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization."

Unfortunately, Section 14(b) applies only to workers covered by the NLRA, and the Oklahoma law says "no person" can be forced to pay dues and fees. The NLRA applies to all private-sector workers except those employed in the railroad and airline industries. Those workers are covered by the Railway Labor Act (RLA), which does not have any RTW provision. Furthermore, the NLRA does not apply to government workers. Oklahoma may enact RTW legislation for its state and local employees, but it cannot do so for federal government employees working in Oklahoma. The Civil Service Reform Act (CSRA) covers them. The unions tried to get the law thrown out on the grounds that it purports to affect RLA and CSRA workers, something that states have no power to do.

Fortunately, in a summary judgment, Judge Frank H. Seay did not let that happen. He said that "it is simply not a reasonable construction to extend the scope of Oklahoma's right-to-work law to include those individuals subjected to regulation under the RLA [and] the CSRA." That is, the authors of the ballot measure knew perfectly well that it could only affect NLRA workers. They did not intend to do that which they knew they could not do. When a statute can reasonably be interpreted in more than one way, the "rules of statutory construction dictate that the court adopt a construction of the state law which will uphold its validity as opposed to one which will render it void by reason of federal preemption."

I am confident the district-court decision will be upheld on appeal, but the authors of the ballot measure certainly gave the unions an easy target and could have at least avoided the costs of this litigation.

It is customary when writing state legislation to include a severability clause that says if any portion of the law is declared invalid, the rest of the law still stands. The Okla-

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homa authors did not do so. That got them in trouble because they included two parts of the law that are clearly pre-empted by the NLRA.

One declared that it would be illegal in Oklahoma for any workers to have to go through union hiring halls to get employment in industries that customarily use them such as construction. It is well established in case law that Section 8(a)3 of the NLRA permits the use of union hiring halls, even in RTW states, so long as the halls do not discriminate between union members and nonmembers. Of course, the nondiscrimination rule is often honored in the breach, but that is another matter. No state may forbid their use.

The other part purported to forbid payroll deductions of union fees (the "check-off") without the permission of each individual worker, and such permission could be revoked at any time. Section 302(c)4 of the NLRA requires the permission of each worker for a check-off, but states that such permission "shall not be irrevocable for a period of more than one year." Oklahoma law says that the check-off is never irrevocable. This part of the state law cannot stand.

Judge Disagrees

The unions argued that since these two provisions of the Oklahoma law are clearly invalid, and since it does not include a severability clause, the whole law must be overturned. Again, Judge Seay disagreed with the unions. The issue of severability is a matter of state law, and Oklahoma has an umbrella statute that states that "the provisions of every act or application of the act shall be severable unless the act contains a nonseverability clause."

The unions also attempted to get the law overturned on the basis of the Oklahoma Constitution, which provides that "where a general law can be made applicable, no special law shall be enacted." The RTW law specifically applies to forced union dues and fees and has no general applicability. Judge Seay declined jurisdiction on this question, and the unions may try their luck in the Oklahoma courts. As Stefan Gleason of the National Right to Work Legal Defense Foundation puts it, "I guess the unions think there is nothing special about being the only private organization that can legally force people to pay for what they do not want."

Finally, as I have frequently argued in these columns and elsewhere, if the NLRA did not impose exclusive representation (monopoly bargaining) on labor relations, the whole RTW issue would be moot. There would be no grounds on which unions could compel workers to pay union dues, for unions would represent only their voluntary members. RTW laws do not solve the underlying problem. They are only second-best defensive measures. It would be much better to scrap the NLRA and replace it with a regime of truly voluntary unionism. □

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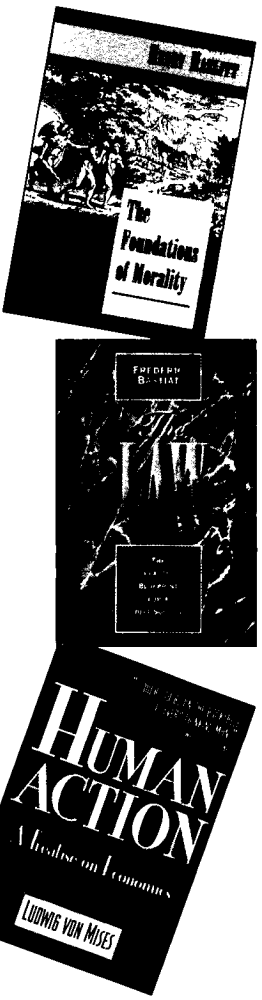

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